Practical Court Reporting

Thorne

INSTRUCTOR

IN

Practical Court Reporting

BY

H. W. THORNE,

(Member of the Fulton County (N. Y.) Bar, and Official Court Stenographer).

CINCINNATI:
THE PHONOGRAPHIC INSTITUTE CO.
1903

"If there's a hole in a' your coats,
"I rede ye tent it;
"A chiel's amang ye taking notes,
"And, faith, he'll prent it." — BURNS.

"A little nonsense, now and then,
"Is relished by the wisest men." — ANONYMOUS.

PREFACE.

The following pages are the offspring of a desire to instruct the would-be court reporter in the application of stenography to the recording of judicial proceedings, and to assist him to surmount the many obstacles which beset his path; to place before the trial lawyer the difficult nature of the labors of the court stenographer, and to paint for the law student a true picture of the life of the court-room: to the end, that the mere stenographer may, if he choose, become a competent court reporter; that the trial lawyer may discover how to obtain the best work from the latter, and that the law student may learn the various steps in the trial of cases as they are, in fact, taken.

The book is intended, primarily, for the stenographer; incidentally, for trial lawyers and law students. My object has been to present to the stenographer every important phase of court reporting, to show and explain the methods generally used in doing it, and to describe the nature and meaning of the various features of a trial.

I have not assumed to instruct respecting subjects of which I do not have personal knowledge. On the

contrary, I have confined myself to matters which have come within the range of my experience.

In the treatment of the subject-matter, lucidity and terseness have been made paramount to mere literary excellence.

H. W. THORNE.

JOHNSTOWN, N. Y., *February*, 1892.

CONTENTS.

Practical Court Reporting.

CHAPTER I.

INTRODUCTORY.

The use of stenography, as applied to the recording of proceedings of judicial tribunals, is, without exception, the most difficult and exacting of the multifarious adaptations of the art to the practical affairs of life. There are judges and lawyers who deprecate its use for this purpose. These belong to a class of old practitioners who, having become wedded to the slow and tedious process of longhand reporting, look with jealousy upon any innovation in methods of technical practice. The court reporter soon learns that the members of the legal profession are an extremely conservative body of persons, slow to adopt new forms or change established procedure.

It is, however, a fact, that, since the adoption of stenography, the volume of testimony taken upon judicial investigations has materially increased, and, instead of trials being shortened, the time occupied has been extended. While this may be, and in the opinion of the author is, the indirect result of the introduction of the stenographer into our courts, and

by some is cited with some show of reason, that the old method of reporting should be restored, yet it may be said upon the other side of the question, in the language of the forum, that cases are tried "closer" than heretofore, and that the lawyer upon the cross-examination of a witness has a wider latitude and better opportunity to get out the truth, and hence justice will oftener be meted out under the prevailing system of reporting than by the former.

One of the bug-bears of the legal profession has been practically swept out of existence by the transcript of the stenographic reporter. Before his advent, the report of the charge of the court to the jury rested in the rough memoranda of the court, and in the sparse notes kept by counsel. Just what was said to the jury was a matter of conjecture. On appeal it was impossible to know what language the court used in charging the jury. The charge of the court to the jury, the requests of the respective counsel to charge the jury and the exceptions taken by the counsel to the charge are the most important and critical parts of a lawsuit. Probably more cases taken upon appeal to appellate tribunals are reversed because of errors in charging or refusals to charge the jury than for any other reason. But, in order that the party, who complains of such errors, shall have redress on appeal, he should have taken "exception" to the charge as made, or to the refusal of the court to charge as requested. And, furthermore, the printed case on appeal must show that such exception was taken. But what this "case" should contain, the presiding judge was sole arbiter. It rested absolutely within

his discretion to "allow" or "disallow" any proposition made by counsel when the case was "settled," as it is technically called. It is not infrequent to hear lawyers heap maledictions upon the memory of some departed jurist, who, for personal, political, or other reasons, refused to allow an exception to be printed in the case, which, if printed and brought to the attention of the appellate court, might have brought about a reversal of the judgment. But this evil is now practically a thing of the past. The transcript of a competent stenographer is now relied upon for a correct statement of what occurred, and such confidence is reposed in it by the bench and bar, that in the case of Nelson against N. Y. C. & H. R. R. R. (1 Law Bulletin, page 15,) decided in 1878, it was held that, where in the settlement of a case there is a dispute as to words, the stenographer's minutes must control.

Courts, for the convenience of this work, may be classified into courts of record, and those not of record. In general, it may be said that courts not of record comprise justice's courts and police courts. The former, except where limited by statute, have civil and criminal jurisdiction, while the latter are limited to criminal jurisdiction. Except in the large cities, these courts in the State of New York, are not provided with stenographers. All other courts (reference not being had to ecclesiastical and military tribunals) are courts of record, and provision is made for the appointment of official stenographers.

The average court reporter will, in the course of a dozen years' experience, be called upon, undoubt-

edly, to exercise his skill in all these courts, and the subject-matter of the inquiries that he will be called upon to chronicle, will be almost as diversified as the leaves upon the trees; and yet, as respects mere matters of form in his work, but slight deviation will be necessary.

Inasmuch as the Code of Civil Procedure of the State of New York has been practically adopted by almost all of what are known as the "Code" States, which Code provides among other matters, for the organization of the courts of record of that State, defines their powers and jurisdiction, and prescribes rules of practice to be observed in respect to the trial and final determination of causes tried in those courts, the author believes it to be advisable to present to the reader in this chapter, in a concise form, some features of the judicial system of the Empire State, which are of special interest and value to the court reporter. What follows relates entirely to courts of record.

THE SUPREME COURT.

Territorial jurisdiction of the Supreme Court is coextensive with the boundaries of the State. It has civil and criminal jurisdiction, that branch of the court exercising civil jurisdiction being known as the special term and circuit, and the other branch being the oyer and terminer, exercising criminal jurisdiction. It is divided into special and circuit terms, and the General Term. The State is divided into judicial districts of which there are eight; and in each of the counties of these districts, special and circuit

terms of this court are held at such times as the justices of the court appoint. Special and circuit terms, and the oyer and terminer, for the trial of issues of fact and of law, are held at the county seat of the county, presided over by a justice of the court, at which panels of grand and petit jurors are in attendance There is no difference in the constitution of the oyer and terminer and the circuit. A few years ago the law provided for the election of lay justices of session, who sat in the oyer and terminer with the presiding judge of the court, and who were presumed to assist him in the decision of questions that came before the court. But, while this presumption was indulged in, as a matter of fact, they simply acquiesced in whatever decision the presiding judge announced. Because of this, the appellation of "block justices" was given to them. It is said, however, that a presiding judge was once overcome with astonishment by the unprecedented audacity of his usually silent colleagues on the bench in overruling his decision.

At a stated time, usually fourteen days, preceding the day appointed for the holding of a circuit term, attorneys who have causes which they desire to have tried at that term, are required to file with the clerk of the court, a "note of issue." This paper contains the title of the court and the county in which the cause is pending, the title of the cause, names of the plaintiff and defendant, the date of "issue," that is, the date upon which the "answer" or "reply" was served; the "issue" whether one of "fact, triable by jury," or whether "of law;" the names of the re-

spective counsel for the plaintiff and defendant, with a direction appended to the clerk of the court, that the cause be placed upon the calendar for trial at the ensuing term. The clerk then makes up from these notes of issue a calendar, placing thereon the causes, numbered consecutively, in the order of the date of the issue. In some counties, the rule has obtained of classifying the causes with reference to "jury" or "equity" cases. The latter being triable before the court, without a jury, and usually tried after the jury cases.

The calendar contains besides the matters above specified, the names of the members of the court holding the term, the officers of the court (that of the stenographer, in conformity to the custom of treating him as a nonenity, being omitted) and the names of the grand and petit jurors. The calendar will usually furnish the reporter the necessary data to make the preliminary entries in his notes respecting the case. It frequently occurs that "counsel," whose name does not appear upon the calendar, or in the papers in the cause, assists in the trial. This, if unknown, can be easily obtained and entered in the appropriate place in the notes. Except in counties where a great many criminal cases are tried, no printed calendar of such cases is prepared.

Special Terms are held usually by each of the justices within the judicial district at their offices, or at what is technically known as "chambers." A stenographer's presence is seldom required at these terms, as the business transacted consists principally of the argument of motions, motions without argument, "settlement" of cases and bills of exceptions in

causes on appeal. Sometimes, however, cases are tried at special term before the justice without a jury, and such a term may last for weeks.

The General Term of the Supreme Court is the branch of that court having appellate jurisdiction. It is divided into "judicial departments," of which there are five in the State. To this court appeals are taken from the circuit and special terms, and from county courts (of which we shall have occasion to speak later on). The proceedings in this court consist principally of arguments of questions of law, and here it is that litigants, who believe that errors have been committed in the trial or disposition of cases in the lower courts, seek to have them cured. The stenographer is not used in this court except upon special occasions, when counsel desire to have their oral arguments preserved, either for their own use or entertainment, or because they conceive that Posterity may be slighted if not provided with them. Most of the justices of this court, however, employ a stenographer to whom "opinions," in cases decided by them, are dictated.

From this court an appeal, in certain specified cases, may be taken to the Court of Appeals, the court of last resort in the State. Here, as in the General Term, the employment of the stenographer is limited to the occasional reporting of arguments and to the dictation of opinions by the judges of this court.

REFERENCES.

In certain cases, among which is that of an action, the trial of which will involve the examination of a

long account, the court may upon its own motion, without the consent of either party, make an order that the issues therein shall be heard and determined by one or more referees, usually one being appointed, who is an attorney at law. Such an order may be made by any court of record. The stenographer finds frequent employment in reporting trials of cases before referees. The order of appointment having been made, the referee appoints a time and place of hearing, and the party desiring to have the reference proceed, or, as it is technically called, "working the reference," serves the opposite party with a notice of such appointment, and with a notice of trial. Upon the day thus appointed, and at the place specified in the notice, the referee and the attorneys meet, and the "hearing" proceeds in the same manner as at circuit, except that no jury is present, and that the trial progresses more deliberately, sometimes being adjourned from time to time, and extending over a period of several years. Among the first reference cases reported by the author was that of a trial, begun years before his connection with it. The hair of the referee had grown silvery; two of the attorneys, who at the commencement of the case appeared upon opposite sides, had become partners, and when the case was continued, still remained hostile to each other. Testimony was taken from time to time, and then finally a long adjournment of half a dozen years ensued. Again the hostile litigants faced each other over the counsel table, and concluded the case, with the result that the plaintiff won the suit, added a few hundred dollars

to the amount of the recovery, and with it, paid his attorneys, and the referee's fees and expenses; beat the stenographer, (who had been unwise enough to deliver transcript, and thus released his lien upon it) out of his fees, and wound up the litigation of twenty years in a manner, that to the stenographer, seemed fitting and appropriate — by dying of *delirium tremens.*

CHAPTER II.

QUALIFICATIONS OF THE STENOGRAPHER.

In most States, provision is made by law for the appointment of stenographers in certain courts. The statute usually defines the qualifications of the appointee and prescribes his powers and duties. One of its requirements is, that the stenographer shall, before entering upon the discharge of the duties of his office, take the constitutional oath of office, and file the same in a specified office, generally in the county clerk's office. The statute relating to this subject invariably provides that the stenographer shall be "skilled in the stenographic art." That portion of the law respecting the oath, is complied with by official stenographers and assistant official stenographers. Probably the only question that could arise from the omission of the stenographer to take and file the oath would be as to whether minutes taken by him were "official." That question could only be raised, if at all, by third parties to the subject-matter of the minutes. It certainly could not be insisted upon by the attorney or client engaged in the trial of the particular case; because they, having gone to trial without making the preliminary objection to the qualifications of the stenographer, would undoubtedly be held by any court to have

waived the objection. And, even if such objection proved tenable, the stenographer might be permitted to take and file the oath *nunc pro tunc*, i. e., as of the proper time, which would cure the irregularity. Each court stenographer ought, whether official, temporary or otherwise, as a part of his official duties, to comply with this provision.

It goes without saying, that the applicant for appointment should be a skillful shorthand writer. The word "skilled," as generally used in the statutes of the different States relating to the appointment of stenographers, is, necessarily, a relative term. Anomalous as it may appear, one having a speed of one hundred and fifty words per minute, capable of being sustained for at least an hour on cross-examination, relating to the subjects and topics that ordinarily come before courts for investigation, and who understands the principles of law involved in, the procedure, and formality of, trials, and has a knowledge, superficial though it may be, of the *technique* of the subject-matter of the case, will turn out a far better transcript than the two-hundred-word-a-minute scribbler, who tries to get on paper every word uttered, and every gesture made by Court, counsel and witness. A mechanical stenographer never yet made a good report or transcript of a law suit which he did not comprehend. One may be "skilled in the stenographic art" to the extent of being able to write two hundred words per minute from dictation; but, to be "skilled" in the application of that art, is quite another thing. Suppose, for instance, the plaintiff's attorney desires to prove

by a witness certain facts; that the defendant's attorney objects to such proof, without stating the grounds of his objection *seriatim*, i. e., that he simply say, "I object," and then proceeds, as is often the case, to argue his points without classification, *in extenso*. Shall the stenographer report every word uttered by him, by the plaintiff's attorney in reply, and by the court in ruling, closing with "I except to your honor's ruling?" Or shall he digest the argument as it proceeds, classifying the points as they are made, and treating the plaintiff's reply in the same manner, and, unless the ruling of the Court limits or modifies the contention of either counsel, simply stating that the objection is sustained or overruled? If the first method be followed throughout a lawsuit, the party paying for the transcript, will curse the stenographer for two reasons, viz.: that he has to pay from six to ten cents per folio for mere chaff, and also that he has to winnow this to get at the points. Now, how can a stenographer use the latter style of reporting unless he comprehends, first, the question — i. e., the issue raised by the question and the objection — the elementary principles of law involved and the rules of evidence applicable? The difficulty experienced in deciding questions of the admissibility of evidence is, not in knowing what the law is, but in determining those principles which are *applicable* to given cases. Having a general idea of the issue, the elementary principles and rules of evidence that *may* be applicable, the stenographer will experience no serious difficulty, provided he gives the discussion strict attention — which of course must

always be done — in digesting and correctly classifying objections of this kind.

The applicant for the appointment of court stenographer will usually have had experience as an assistant to an official stenographer, or in doing general reference reporting, and will have demonstrated, to some extent, at least, his skill in and application of the stenographic art, and will probably have become known to the judges and attorneys of the locality in which he does business. Politics enter largely nowadays into the question of the appointment; although, it is by no means controlling. Judges and lawyers look first to the reputation of the applicant for skill in the art. They have not yet learned the distinction attempted to be made in this chapter between skill in the art, and the application thereof to the reporting of lawsuits. They regard the "gentleman from Arabia" (as one facetious attorney calls the stenographer) as a sort of drop-a-nickel-in-the-slot, or, you-press-the-button, machine, into whose ears words, sentences, and even whole books may be dropped, which, falling upon the tympanum, sets in motion machinery, that, no matter how fast they are dropped, transmogrifies these words, sentences and books, into strange hieroglyphic symbols, without any mental effort on the part of the aforesaid machine. This is unfortunate for the better class of stenographers; and, were it possible to relieve the Bench and Bar of this delusion, the competent stenographer would be appreciated, and the incompetent would be relegated to his proper sphere. A vacancy existing, let the stenographer decide whether he is competent to do

the work — first, whether he has the skill, and second, whether he can apply that skill to court work. If he decide this question in the affirmative, then seek the appointment. Obtain from every judge and attorney before whom or for whom he has reported cases, an honest expression of opinion of his capability. Go in person and, if possible, see the judge or judges who have the power of appointment. Do not exaggerate your stenographic ability. Keep your thumbs out of the arm-holes of your vest, and do not pretend to be other than what you are — a young aspirant anxious to show what you can do. If you have special facility in performing any of the duties of a stenographer, press it upon their attention, especially, if it be readiness in reading your notes. This always has a telling effect, because so many otherwise first-class court reporters, who have labored "long and hard at the oars," are, either from timidity or some other cause, lamentable failures as readers of their notes. If it happen that you are an applicant for appointment to the county court of your county, and you have no local competitor, and the work has been done by an "old hand" from outside, you will sooner or later, if you reach the standard outlined in this chapter, receive the appointment. But, if you do not come up, or pretty near, to this standard, you will have trouble.

The "blind" stenographer is a subject for deep commiseration. To him every step in a proceeding or investigation is tinged with the mysterious. He can distinguish pretty well between a civil and criminal case; but he could not determine that Jones v.

Brown is an equity case, did not the calendar state that fact, and except that a jury is dispensed with. He usually "takes" everything, from the administration of the oath by the clerk, or by the court, to witness down to the "thanks" of the court to the grand jury "for the promptness and fidelity, gentlemen, with which you have performed your duties." He is troubled with horrible dreams of possible omissions of such sentences as, "Now, Mr. Witness, I will repeat the last question," and "Now, if your honor please, I object." At the conclusion of a case, he believes that he has committed something to paper; but, beyond the fact that it is a horse lawsuit, an assault and battery case, or that a line-fence is, "somehow or other," mixed up with a lot of figures, angles, courses and distances, he is in doubt as to just what has happened. The young court stenographer is, usually, more or less affected with this description of blindness, and the difficulties and misgivings that beset his pathway, make it anything but roseate. The only remedy for this want of discernment is time and study. But this should have preceded his appointment, and he will find that, before he becomes able to do his work with perfect confidence, feeling that he fully comprehends everything that occurs, excepting perhaps the cross-examination of a witness by a "fresh" young lawyer, (which is presumed to be unintelligible) he will tumble into many pitfalls, and make many egregious mistakes.

The court stenographer ought to be perfectly competent at the time of his appointment to report anything and everything. Once he begins his work, there

is little, if any, time for preparation for that particular case. He is supposed to do it without mistake; but often, and oh, how often! does this rest in mere supposition! In this respect, the practice of the art in court differs from almost everything else. The inexperienced young lawyer has abundant time to prepare himself upon the facts and law involved in his cases. He has the opportunity of knowing beforehand almost every difficult feature that will be encountered, and he can anticipate much that his opponent may spring upon him. But the stenographer in court sits down to the table unconscious of whether he will be called upon to scribble the testimony of a physician, who will dilate with fiendish (to the stenographer) delight, upon the far-reaching injury to the nervous system resulting from external violence to the *medulla oblongata*, or the inducing causes which render the *external malleolus* of the *fibula* liable to *anchilosis*, or the evidence of a sculptor descriptive of the processes of making a bronze statue. The court stenographer must, to use a homely expression, "be on his taps" first, last, and all the time. If he tire, nobody cares, and few know it. No matter if his stock of vitality *is* exhausted; the lightning-talking witness talks faster; the cross-examiner's questions pour in faster and oftener, and each one seems more complicated than its predecessor. It is under such circumstances that the blind — the mechanical, incompetent, ignorant — stenographer meets his Waterloo. Confining himself merely to the act of writing sounds, he has no opportunity to grasp the meaning of the subject-matter, and even if he had, he could not com-

prehend it. On the other hand, the competent stenographer, the veteran of numberless similar encounters, is almost oblivious to the act of writing; and, following and understanding the examination, he is enabled to "carry" considerable matter in his mind; writes more deliberately and hence, the formation of the outlines is better, more exact, and more easily read. In the latter instance, it does not partake so much of the character of a race between writer and speaker. One thus trained will "carry" easily a question and answer, and, speaking from experience, it is possible to "carry" and write correctly, several questions and answers. But the act of "carrying" is exceedingly wearisome.

Too many court stenographers are afraid of stopping witness or counsel. Rather than be subjected to the humiliating experience of asking a witness to repeat his answer, resort to heroic measures: "Throw the ink bottle at the enemy." Shout if necessary at him or her — the ladies, (begging their pardon) in court, are the greatest and most persistent enemies of the stenographer — "Wait a minute, Mr. Witness!" Difficulty will be often experienced in attracting the attention of the witness, which is usually directed to the counsel on the side for which he is sworn. But stop not at such trifles. Call out — if a man, his first, last, or first, last and middle name — "Vestus Roricus Jenkin-higgins! Wait a minute!" But, at any rate stop the flow of language as quickly as possible even if you have to resort to the act of "chucking" the ink bottle at him. You will frighten nobody by doing it. It has

been done before your time and it will be done after you have ceased to make crooked marks and are safely garnered where lawsuits and cut-rate "stenog-incompetents" are unknown. We here publicly confess to having stopped — yea, and even lectured, and scowled at — witnesses; and we hope to be spared many years to repeat it. Like confession for the soul, the aforesaid lecturing and scowling gave us instant relief, and acted, like a bracing atmosphere, to tone our nerves and refresh our spirits. Try it. The same remarks are applicable to counsel, except the lecturing. There you are at a disadvantage, for, like Goldsmith's schoolmaster,

E'en though vanquished, they can argue still.

But you will find a sort of safety-valve relief to occasionally indulge in some scowling liberally interspersed with good, homespun (inward) denunciation of counsel. But, young man, do not forget to "throw the ink bottle" at the proper time.

In order to do good work, the stenographer should have read, or in some way learned, the elementary principles of law. He need not, necessarily, be a lawyer; but as above stated, he ought, in order to do good work, comprehend the meaning of what is taking place, the record of which he is making. Good advice to a shorthand writer, expecting to enter the field of court reporting, would be: Go into a lawyer's office and take up the study of law, the same as a law student. Make yourself thoroughly familiar with the forms of procedure and the *technique* of the profession. A stenographer was advised to devote his attention specially to the rules of evidence. The

advice was wrong. Devote time and attention to that, not, however, to the exclusion of other subjects. Read Parsons on Contracts, Addison on Torts, Bishop's Criminal Law, Baylies' Trial Practice, The Codes of Procedure, not omitting some good works on evidence. The commentaries of that great jurist, Blackstone, may be added to this list. But unless the student intends to fit himself for the practice of law he will save much time by omitting the latter. If those first mentioned are studied faithfully, and the student attend all, if possible, of the courts held in his locality, there and in the office, closely observing the practical application of the principles he has studied in the books above mentioned, and doing as much law reporting as he can obtain, (with which at first he will not be overburdened,) he will, in time, fit himself to apply for the coveted position. It must, however, be remembered, that the proficiency of the law stenographer will depend largely upon his general information. A mere knowledge of shorthand is insufficient. He ought to be well grounded in the four "R's" of knowledge, and in addition should have a superficial knowledge of many subjects. Natural philosophy, physiology, anatomy, the geography of his own country, and geology will materially aid him in doing good work. He will find that poetry, art, fiction and polite literature in general at times constitute a part of the subject-matter of his work. In short, let the ambitious aspirant read all he can; let him acquire as much exact information as possible of those subjects which he will most fre-

quently encounter, and a superficial knowledge of as many more as time will permit. Cultivate a taste for general reading, and a curiosity to learn the causes of results. Never forget that diversified information will enable the stenographer to intelligently apply his skill in the art; that it will enable him to perform his work with comparative ease, and in the end will bring shekels and a good reputation as a practitioner; while with mere mechanical skill, he will never rise above mediocrity, his transcripts will be the subject of continual criticism, and his income be what it should — small.

CHAPTER III.

A DAY IN COURT.

THE COURT stenographer verily "holds the mirror up to nature." He catches the pathetic, the serious, the humorous and preserves it in indelible impressions. The tones of the voice, the shake of the head, the gestures and movements of the body are alike safely housed for posterity. One hour he may be engaged in recording matter upon the accuracy of which a life depends, and the succeeding hour finds him penning in mystic characters the laughable utterances of a son of the Emerald Isle. Quiet, unostentatious, always at the post of duty, writing—ever writing—sometimes the crisp and brilliant utterances of a master-mind, at others reluctantly scribbling the vaporings of a fresh "limb of the law." Regardless of bad ventilation or conditions of temperature, he must "drive the quill" all day, day after day. While counsel can move about and thus relax the tired muscles of the body, and even the Court "take a turn" up and down behind the bench, the faithful slave of the pen must maintain substantially the same position. No, his muscles never weary! When the case on trial must be finished, it wont hurt "Mr. Stenographer, will it," to work until midnight? When the furnace gives out, *his* fingers do not get

cold. Of course, the Court and counsel can leisurely don overcoats and listen as well as ever to the testimony while rubbing their hands together to keep up the circulation. So could the stenographer if — but, then, he has..t time and, beside, an ulster overcoat isn't the best sort of garment to wear when writing at a table.

Let us here relieve our burdened mind on the subject of the barbarously defective ventilation of the average court-room. And, if the interlarding of it at this place shall destroy what little prospect of a kind reception might have existed for this unpretentious effusion of our pen, but at the same time shall, in the least, tend to bring about a reformation in the ventilation of the court-room, we shall feel that we have had our say at small cost.

The average court-room is heated by apparatus selected, usually, by a committee of the county board of supervisors, made up mainly of strong, healthy, robust business men and farmers, whose lungs, by reason of the activity and recreation incident to their vocations, are practically impervious to bad air. This apparatus is generally managed, either by the servants of the sheriff, or by a janitor appointed by the board of supervisors, whose knowledge of heat, pneumatics, and ventilation is about as wide, diversified and accurate as is their information respecting the Nicene Creed. Under the direction of these "scientists" the doors and windows are closed as tight as a drum-head, not a stray current of air being accorded entrance to the sacred precincts of the court room "under penalty of law." The red hot

fiend of the lower regions, the furnace, is then set in full operation, and the foul air of the cellar is heated and sent up to commingle with that of the court-room, already contaminated by the impurities from the respiration of a couple of hundred lungs, spiced with the foul emanations from cuspidores, stray tobacco-cuds, and by — well, we were going to say the perspiration from unwashed bodies — we omit that. This aggregation of filthiness loads down the atmosphere with disease and death dealing causes, and when judges and lawyers (of course it makes no difference if it kill off a stenographer or two) break down prematurely and, as physical wrecks, linger on for a few years, it is charged to the already overburdened account of "nervous prostration," and the machinery of the law goes on just as merrily as ever. It is scarcely a month ago that a justice of the supreme court was so overcome with the foul atmosphere of a court-room, that he was compelled to relinquish his intention of charging the jury at the evening session, and, went to his house the next day ill, undoubtedly, from the effects of the impure atmosphere. Shall it be expected that judges, stenographers and other officers of the court, with these injuriously irritating surroundings, will manifest that patience in the trial of causes which the legal profession, and its client, The Public, require? Who can tell how far the limitations of liberty and the rights of persons and of property may have been affected by these shameful nuisances, acting directly upon the physical, and consequently upon the mental condition of our judges, stenographers and other court officers? And with

this foe, the aspirant after fame as a court stenographer, will have to cross swords. I hope the aspirant may be victorious. This is no fancy sketch; and, before a stenographer counts his years of experience in badly ventilated court rooms upon the fingers of his right hand, he will regard a work on court reporting defective which does not touch upon this evil.

One of the burning questions, if not the most important of all, that comes before the stenographer, is what to "take" and what to omit "taking." The law under which court stenographers are appointed usually provides that they must, under the direction of the judge, presiding at or holding the term or sitting which they attend, take full stenographic notes of the testimony, and of all other proceedings, in each case tried or heard thereat, except when the judge dispenses with the reporter's services in a particular cause, or with respect to a portion of the proceedings therein. In practice, the presiding judge does not indicate what the stenographer shall record. Occasionally he may direct that some special matter be taken; but as a rule it is presumed that the stenographer knows his duty in this respect. This presumption is, however, sometimes a violent one.

The stenographer puts in an appearance on the first day and, unless relieved by an assistant, remains through the sitting of the court. The first day of the term usually occurs on Monday, and we find "Mr. Stenographer" on hand at the opening of court, bright and early, ready for business. Looking

over the calendar, which can always be obtained from the clerk of the court, he gets an approximate idea of how much there is to do, aided in coming to that conclusion by his knowledge of the duration of previous terms in that county. The judge arrives, and, if it be in a country district, then occurs a season of nodding, handshaking and a general salutation all around, between the recently-arrived judge, and especially the older members of the bar, the younger fry in the meantime looking enviously on and mentally calculating the passage of time that will necessarily ensue before the marks of eminence, sometimes consisting of baldness, a portly person, and a plethoric purse shall entitle *them* to walk with stately mien to the bench and exchange salutations and pleasantries with "his honor."

WHAT NOT TO TAKE.

The first business in order after the court crier has "opened" court, is the calling of the grand jurors by the clerk, and the charge of the Court to them. This need not be taken by the stenographer, no record, beyond the entry in the clerk's minutes, being made. The grand jurors then retire to rooms provided for their deliberations, not returning into court until they present the indictments found by them. Their coming, upon a hot September afternoon, in the midst of a spirited cross examination furnishes the weary stenographer with a welcome breathing spell. The Court usually stops proceedings in the case on trial and receives the indictments, thanking the jury on behalf of the tax payers. No record

need be made of any of these matters relative to the grand jury.

The names of the petit (small) jury are usually called after those of the grand jury. Thirty-six persons are, in most States, summoned as petit jurors. Excuses are first heard by the Court from the latter, who wish to be relieved from sitting during the whole, or a part, of the term. Having disposed of these excuses, the clerk swears the entire panel, and they are generally discharged until the afternoon session. The clerk makes all the necessary entries in his minutes respecting the petit jury; the stenographer making none.

The Court then announces that he will hear *ex parte* motions. An *ex parte* motion may be defined as an application to the Court for an order of some description, to which application there is no opposition. There is no argument, sometimes a brief statement of its nature, being made by the attorney making the application. Of course there is nothing for the stenographer to record.

The hearing of *ex parte* motions is usually succeeded by "contested motions." Rarely is the stenographer called upon to report these. Occasionally, counsel may request a report of the argument of the motion. Upon these motions, the attorney making it, has the opening and closing speech. He begins by a statement of the relief he seeks, usually stating the grounds and reasons therefor, the written evidence of which rests in affidavits — sworn statements — which, being filed with the order made by the Court, make up the record. The attorney opposing

the motion, replies, stating his reasons for objecting to the granting of the order, and arguing the points upon which he relies. The attorney for the motion replies, and the Court disposes of the motion, granting or denying it. Sometimes the Court "takes" the papers, and disposes of it at his leisure, perhaps during that term of the court, or afterward.

The calendar of causes is then called by the Court, commencing with the first case thereon and going through the entire list, the attorneys for the respective parties replying "ready on the part of the plaintiff" or "defendant" as the case may be, or "not ready," and, if not ready for trial at that term, stating that a motion to put the cause over the term will be made. As the Court calls the cases, he marks each case "ready," "reserved," "over," "off" or "settled" according as the call is responded to. The stenographer having provided himself with a calendar, should mark the causes in the same manner. This call of the calendar is for the purpose of learning what cases are ready for trial. Having gone through the calendar, the Court begins the "regular" call thereof, commencing with the first case that was announced and marked "ready" upon the first call. The regular call is usually begun at the commencement of the afternoon session, when the jury are present.

Beside the motions referred to, other applications to the Court may be made in cases upon the calendar upon the regular call thereof, a record of which it will not be necessary for the stenographer to make. It is impracticable to specify all such as may arise.

A few instances will suffice for illustration. Suppose in the first case called for trial, upon the regular call, there is no appearance by the plaintiff's attorney; the defendant s attorney being present, may move for a dismissal of the complaint. Assume that there is an appearance by the plaintiff's attorney, and a default in appearance by the defendant's attorney; that the allegations of the plaintiff's complaint are not denied by the defendant's answer, but that the answer sets up a counterclaim. In that case, upon proof by affidavit of service of notice of trial upon defendant's attorney, the Court may (although it is unusual to do so on the first day of the term in most counties) order judgment for the plaintiff. There is no necessity of taking this, as the order directing judgment recites, or ought to recite, the proceedings sufficiently to show what occurred. Then again there are certain cases in which there has been no appearance in the action by the defendant, but, from the nature of the case, it is necessary to make a formal application to the Court for judgment. Here again the papers in the case, and the order made, show, or ought to show, everything necessary to make the record complete. The clerk of the court, it is assumed, will enter in his minutes, brief memoranda of all these proceedings.

There are certain proceedings which occur when prisoners are arraigned in court, some of which the stenographer must take, and others may be disregarded, unless specially requested to record them. It is unnecessary to take the questions propounded by the clerk of the court and answers thereto upon the ar-

raignment of a prisoner, or the proceedings when the prisoner has pleaded guilty, or has been convicted and appears before the Court for sentence. Upon the latter occasions, the clerk formally asks the convicted man, "Have you anything to say why the sentence of the law should not be pronounced upon you?" The prisoner invariably replies in the negative, or asserts his innocence, and thereupon the Court proceeds to pronounce the sentence, generally prefacing the formal sentence with an epitome of the circumstances under which the crime was committed, cautioning the unfortunate convict against a repetition of the same crime, or the commission of others; pressing home to his mind the opportunity and necessity for reformation and informing him of the chance he has by good conduct to earn a commutation of the sentence. It is unnecessary to take any of this. What should be recorded under certain circumstances upon the arraignment of a prisoner will be considered hereafter.

Without having reference to the proceedings upon a trial, a general rule may be laid down, to which (like all general rules) there are exceptions, which will aid the stenographer in determining what matters he may omit to take, viz.: In all matters that come before the Court for determination, in which the papers used before the Court contain the facts, grounds or points relied upon by the moving party as the basis of the relief or recovery sought, the stenographer, in the absence of special direction from the Court, need make no record.

CHAPTER IV.

A DAY IN COURT (continued).

WHILE THE subject of what can be omitted from the record is important, yet that of what should be taken, and how to do it with the most ease and facility compatible with so difficult an undertaking is of the deepest interest to the stenographer. And to throw all the light possible upon this question to the end that the difficulties that meet the young court stenographer may be readily and intelligently overcome, shall be the purpose of this and succeeding chapters.

THE TRIAL.

The afternoon session having been opened by the court crier, the case of Competent v. Incompetent is called for trial by the Court. The plaintiff may appear in person without an attorney, but invariably he appears with one. The defendant, Incompetent, makes default in appearing, i. e., does not appear. The plaintiff waives a jury, and, without even stating the case to the judge, swears usually but one witness, simply proving the allegations contained in his complaint, and a computation of interest. Thereupon the Court orders judgment for the plaintiff. This ends the proceeding so far as the stenographer is concerned. This is termed, taking

AN INQUEST.

The form to be used in the stenographic report, as respects the title of the court, title of case, appearances, etc., may be as follows: the words in Roman being always written in longhand, while those in italics may be in longhand or shorthand, at the option of the writer:

FULTON CIRCUIT,

October (19) 1891,

PUTNAM, J.

JOHN COMPETENT	Old Stenographer.
v.	
JERRY INCOMPETENT	*No appearance.*

JOHNSTOWN, N. Y.,
October 19th, 1891.

Inquest, taken before the Court, a jury being waived.

John Competent, *plff.*

By Old Stenographer.

Then follows the testimony given by the witness In the first line of the preceding form appears the name of the county and the court — circuit always meaning trial term of the Supreme Court. Following this in the next line is the month, the day of the commencement of the circuit, and the year. These dates should appear in every case recorded during

the term, no matter if the term runs into the succeeding month, which is often the case; because for certain purposes everything dates from the first day of the term. In the next line appears the name of the justice presiding, the letter "J" being an abbreviation of the word "Justice." In the following line within the brace appears the name of the plaintiff; following it and between it and the name of the defendant below appears the letter "v," a convenient abbreviation of *versus*, a Latin word meaning "against." Sometimes the word "against" is used instead, and very often shortened to "ag'st." To the right of the brace opposite "John Competent" appears "Old Stenographer," the name of the plaintiff's attorney, placed there because it appropriately belongs opposite the name of the plaintiff. Write here the names of all the attorneys and the counsel who appear for the plaintiff, placing the name of the attorney of record first (which will appear upon the calendar), following it with the names of counsel, writing after the latter names the words "of counsel." When there are appearances for the defendant, treat them in the same manner, placing them below those for the plaintiff and opposite the name of the defendant.

While it is presumed that the term will be held at the county seat, yet it is proper to write that below, as in the illustration, with the month, day of the month and year, upon which the trial begins. Next appropriately follows a statement of the character of the proceeding, supplemented with the fact of waiver of jury, if a trial by jury be waived. On the next line

below, write the name of the witness, and, if the witness be plaintiff or defendant, state that, together with the name of the attorney (in this case "Old Stenographer") who examines the witness, placed in the following line. Subsequent to that, of course, should appear the examination of the witness, after which if the Court order judgment as above stated, enter in shorthand the following memorandum, or its equivalent: "The Court ordered judgment for the plaintiff for $295."

Having completed this record, clear the deck for the next cause. That may be a criminal case. The one just disposed of was a civil cause. Recollecting what was said about the circuit term of the supreme court, the civil branch, and what was said about the oyer and terminer (meaning to hear and determine) or the criminal branch, it will be seen that without any change in the constitution of the court, the trial of a criminal case may immediately follow that of a civil cause. But criminal cases will be considered hereafter.

Assuming that No. 10, the case of Jenkins v. Briggs, is the next civil cause marked ready for trial, which the Court calls, as stated above by number and name, counsel for plaintiff and defendant answer "Ready!" The Court addresses the clerk with "Call a jury in No. 10, Mr. Clerk;" the respective counsel and their clients place themselves in battle array, the plaintiff's counsel usually occupying the seats at the counsel table nearest the Court, and in front of the jury, and the defendant's counsel, seats at a table next to the plaintiff and facing the jury.

The stenographer makes the appropriate preliminary entries in his minutes respecting the case which may be in the same form as that just given on page 39, (except that he will note the appearances for the defendant) continuing down to and including the name of the county-seat or place of trial. Then, instead of inserting the date, as given in the illustration, it will be better to make this entry (written in shorthand): "Trial commenced October 19th, 1891, at 2 P. M." It is not necessary that this entry should be made; but, inasmuch as it often proves of convenience to counsel in determining questions of time, and also forms a part of the history of the case, it is well to insert it, as at this stage, the writer has an abundance of time to do so.

THE JURY.

By the time the preliminary record has been thus made up, twelve "good men and true" (which of course every one knows to be the number of persons comprising a petit jury) will have taken seats in the jury-box in response to the call of the clerk. Either party has the right to challenge the entire panel of jurors. This is termed a challenge to the array. A challenge is in the nature of an objection. Beside challenges to the array there are challenges to the polls. These consist in objections to some individual jurors, based upon matters tending to disqualify the jurors from serving. Either party to the action has the same rights respecting the use of challenges. The plaintiff in a civil case, and The People, or Prosecution in a criminal case, usually first exercises

the right of challenge to jurors. The plaintiff generally examines each of the jurors to determine whether he will excuse any one or more of them "peremptorily" i. e., without assigning any reason for so doing. The number of jurors as to which a party may thus exercise his right of peremptory challenge, as it is called, varies in civil and criminal cases in the different States. In the State of New York, it was, until the first of September, 1891, limited in civil cases to two; but on that date, an act of the Legislature of that State went into effect which increased the number in civil cases to four in courts of record. Beside these peremptory challenges, the right of challenge to any juror exists where for certain specified *legal* reasons he is disqualified to sit as a juror by reason of not possessing the prescribed statutory qualifications of the particular State, or by reason of prejudice, bias or having formed, and entertaining, an opinion with regard to the issue involved, which opinion would render him unable to pronounce a fair and impartial verdict between the parties.

The plaintiff and defendant equally have the right of challenge; the plaintiff being required to first exercise such right first announces "content, your honor," which, of course, means that the jury as thus made up is satisfactory to the plaintiff. The stenographer need make no note of the peremptory challenge except upon a "temporary memorandum sheet" of paper to enter the following details which may be in this form:

PEREMPTORY CHALLENGES.

	Plaintiff.	Defendant.	
1	John Doe	Thomas Johnson	1
2	Richard Roe	George Dickens	2
3	John Jackson	James Thackery	3
4	Daniel Deronda	W. C. Bryant	4

When, during an examination of the jury, a dispute arises, as it sometimes does, as to the number of peremptory challenges exercised by either party, the preceding entries upon the stenographer's side sheet will quickly determine the controversy. This sheet may be destroyed after a jury has been obtained.

The most important duty of the stenographer in connection with the empaneling of the jury arises upon the second class of challenges above referred to. Especially is this true of this part of the trial of a criminal case, in which days, weeks, and, as in the case of the trial of The People v. Sharp in New York City, more than a month may be consumed. Important questions respecting the admissibility of evidence, the competency of jurors to sit and other questions arise upon this branch of the case, and the reports of decisions of the courts of the different states contain numerous cases in which these questions have been decided, and judgments reversed for errors committed by the trial courts during the examination of jurors. This feature of a trial is more conspicuous in criminal cases — in fact it seldom occurs in a civil case.

The stenographer who will study the works of practice regulating the formalities of the procedure

of his State in the trial of cases, will learn respecting the challenging of jurors, that of which some judges and a good many lawyers, are, either ignorant, or which they forget, viz.: that, to be effectual, the ruling of a court, upon every challenge (other than a peremptory challenge), must be based upon proof, either by stipulation between the parties — in a criminal case it is doubtful whether a stipulation would bind the defendant — or by sworn testimony, of the facts showing either the qualification or disqualification of the juror. The juror challenged should be sworn as to his qualifications to sit in the particular case, and the examination should be taken by the stenographer. Many attorneys, either because of ignorance or forgetfulness, proceed with an examination of a juror upon this kind of challenge without having the juror previously sworn; and, the examination being completed, address the Court, "If your honor please, I challenge the juror for favor" or "principal cause" or "for bias" or "for prejudice." Perhaps the juror examined sits in the second row of seats at the end farthest from the stenographer, who usually sits near the juror in the front row, at the end nearest the Court. Jurors are generally timid and afraid to speak audibly, and the stenographer has not been able to catch one word. It's just as well; because, unless the opponent of the challenging attorney consents to accept the examination of the juror the same as if he had been duly sworn, the examination will have to be repeated. Now is the time for the stenographer (who until now has been lost sight of) to make known his pres-

ence. He should insist upon having the juror sit either in the witnesses' chair, or somewhere else near him, so that he can get, by question and answer, the full examination of the challenged juror. Don't be afraid. It is a duty you owe your physical powers to demand that your onerous work, so taxing on the nervous system, shall be made as easy as the nature of the proceedings admit. A stenographer should not be required to strain his sense of hearing, and divide his attention between the act of writing and looking half-way across a court-room among the shining pates of counsel and the generous locks of jurors to note the gestures of a juror, and catch his mumbled responses to counsel, and he who does so is inexcusable. Young man, be not afraid to insist upon your rights. Recollect that you are an officer of the court and your wishes are entitled to some respect. Having once inaugurated an innovation in these formalities of procedure, you will, after a time, have the satisfaction of the spectacle of Court and counsel unconsciously conforming to your methods. But, of course, do not be rash. Attempt no reforms that are not warranted by convenience and reason. Do not permit the consciousness of your official position to inflate your pride to the extent of making you obnoxious. Having insisted upon your rights, the juror having been sworn and occupying a seat near you, you should have made the appropriate preliminary entries in your minutes descriptive of the proceedings taking place. If you have not, and have not then time to make them before the examination of the juror begins —

which will probably be the case — do so at the first opportunity, leaving sufficient space therefor, contenting yourself for the time being to write the name of the juror, the fact that he is challenged, and by which party, the grounds of challenge and the attorney by whom he is being examined, following with the testimony of the juror. The following form may be used, the name of the juror being in longhand and the remainder in shorthand: "Timothy Tugmutton, a juror, sworn as to his qualifications, challenged by defendant (here insert grounds of challenge) examined by Mr. Shiningpate, defendant's attorney, testified:" If you use a bound note book, simply enter in longhand, written sufficiently large to be conspicuous, after the statement of the month, day, year and hour of the commencement of the trial:

EXAMINATION OF JURORS.

If, on the contrary, you use loose sheets of numbered paper, which for convenience you divide into books, make a separate book for the examination of jurors. The preliminary entries respecting title of court, case, appearances, etc., may be in the same form as above given. Enter objections. rulings and exceptions the same as hereafter specified in the next chapter with respect to that subject upon the examination of a witness.

Upon the examination of jurors respecting formation of opinions as to the guilt or innocence of the accused, certain questions will be repeated many times with scarcely any difference in verbiage. To

illustrate: suppose the District Attorney, upon the direct-examination of a juror, has elicited testimony showing that the juror has formed an opinion, either from conversation or reading about the case. Assume that the defendant's counsel desires to retain the juror, or to raise an issue of law as to his qualification, trusting that, by so doing, the Court *may* err in permitting an incompetent juror to sit, the defendant thereby obtaining a ground for reversal of the judgment in case the defendant is convicted. This is often resorted to by the defendant's counsel when, as a matter of fact, he does not want the juror to remain on the panel. If the Court hold that the juror is competent, the defendant can afterward exercise his right of peremptory challenge. A question frequently put by the defendant's attorney under these circumstances will run something like this: "Notwithstanding the answers you have made to the District Attorney, and notwithstanding the opinion you have formed, and expressed, do you believe that, uninfluenced by that opinion, you can sit upon this panel of jurors, listen to the evidence as it is elicited from the various witnesses, and render a fair and impartial verdict between the People (or Prosecution) and the defendant at the bar, without bias or prejudice?" Probably — in fact usually — the defendant's counsel frames his question in conformity to the holding, as he understands it, of the Court of Appeals, or the highest court of the State in which the trial is occurring, endeavoring to embody all the elements which that court has decided will render a

juror qualified, even if he has expressed an opinion. This and similar questions put to jurors will often be repeated with unvarying monotony, until the writer will be heartily tired of them. It is important to get the question *verbatim et literatim.* Another question with which the counsel first examining the juror, (which is termed the "direct" examination and that which follows being called the "cross" examination) generally closes the direct-examination is, "Do you think that you can sit as a juror in this case, and render a fair and impartial verdict upon the evidence as it shall be given to you by the witnesses in the case?" When a challenge is sustained, the juror challenged is discharged from the panel, and another juror is called by the clerk to take his place. This proceeds until the plaintiff, if it be a civil case, or the prosecution, if it be a criminal case, is satisfied with the composition of the jury. The plaintiff's attorney usually makes that known by "plaintiff's content, your honor." The stenographer should have entered upon his "temporary memorandum sheet" the names of the jurors who have been challenged and left the panel up to this period, so as to be able to inform Court or counsel later on the names of those jurors who have been accepted; because once a party expresses satisfaction he cannot withdraw it, and object to a juror. Hence, it is often important for the stenographer to be able to tell, quickly, the jurors who were in the box when the panel was accepted by either party, for it is a very common

occurrence that a wrangle ensues between counsel as to this point.

The plaintiff in a civil case, or, in a criminal case, The People being satisfied with the jury, the defendant then proceeds in the same manner to exercise his right of challenge. The proceedings will, of course, be similar to those already taken. It very often happens that the entire panel of jurors drawn is exhausted by the challenges. If it be probable that the panel can be completed in a short time, the Court has the power to direct the sheriff to summon persons from the bystanders to act as jurors. The persons so summoned are technically known as

"TALESMEN."

The stenographer chronicles these facts in appropriate language, which may be as follows: "The regular panel being exhausted, the Court directed the sheriff to summon (state the number) talesmen from the bystanders, whereupon the sheriff summoned the following named persons (here state the names in longhand)." The examination of these talesmen is conducted the same as above described respecting jurors drawn from the regular panel. If it appear probable that a larger number of talesmen will be necessary to fill the jury box, the Court generally makes an order, which the clerk enters in his minutes, to the effect that the sheriff is directed to summon from the body of the county a given number of persons as jurors. A brief statement of this should be made by the stenographer; and, after the return of the sheriff, the

record may be as follows, written of course, in shorthand: "The following persons, summoned as jurors by order of the court, were then sworn and examined" (here insert their names). The proceedings upon the examination of these being the same as the others, the record will be continued as before; that is, as respects matters of form. In criminal cases the jurors, besides being sworn when first called in the full panel, are sworn in each criminal case tried, and this should be noted.

Having finally obtained a jury in the case, the stenographer, if he use loose sheets as before referred to, binds those containing the examination of the jurors together in some convenient form, indorsing them appropriately with

"*Book No. I.*

EXAMINATION OF JURORS."

These should be put away as they will not be needed again during the trial. The record of the remainder of the proceedings may be continued on the sheet upon which the report of the case was begun, making an entry in parenthesis "for examination of jurors, see Book No. I." The book upon which the report is continued will of course be indorsed "Book No. II."

The next step in the trial may be a

MOTION TO DISMISS THE ACTION

upon the pleadings — the meaning of the last term will be explained hereafter — or for some other relief

or order. Usually, however, no motion is made until after the plaintiff

OPENS THE CASE

to the court and jury. In New York State the plaintiff (unless the Court rules that the defendant has the affirmative) always opens and closes to the jury.

"Opening" the case consists in a brief statement of the facts and circumstances which form the basis of the cause of action; the reason for the lawsuit. It is not necessary, in the absence of a special request from the Court or counsel, to reduce this to writing. It frequently happens, however, that after the opening of the case, the defendant's attorney moves for a dismissal of the complaint upon the pleadings, and the opening of plaintiff's attorney upon grounds, which he states, usually that the plaintiff's opening shows that he expects to prove certain facts, the defendant claiming that, assuming those facts to exist, the plaintiff has no cause of action. It is then important that the record should show just what the counsel stated to the jury. If the stenographer has not taken it, he should make known that fact at once, and usually counsel will agree upon a statement of facts, which, of course, should be entered in the notes. The Court then rules upon the question raised, and the party against whom the ruling is made "excepts;" that is, takes exception to the ruling. Both ruling and exception should be entered. Sometimes before the opening of counsel, the defendant's counsel "claims the

affirmative." This is quite important to the stenographer, and his notes should show fully what occurs without slavishly following *verbatim et literatim*, the meanderings of counsel through a verbal wilderness.

CLAIMING THE AFFIRMATIVE

may be briefly stated to be a claim by the defendant that he has the right to the opening and closing of the case to the jury; that the allegations of the plaintiff's complaint are, either admitted, or not denied (in either case the legal effect is the same) by the defendant's answer, and that the answer sets up an affirmative defense, a counterclaim or a set-off to the claim of the plaintiff. If the contention of the defendant be correct, then the situation of the matter is like this: That there is nothing for the plaintiff to prove until the defendant has offered evidence upon that side of the case and rested; and, if the defendant offer no proof, the plaintiff is entitled to judgment upon the pleadings. The Court having ruled with the defendant, the latter has the opening and closing, and consequently proceeds to open the case to the jury. The nature of this step in the trial has just been explained.

THE PLEADINGS.

The term "pleadings," as used in New York and other States, means those papers in a case which define and limit the issue between the parties. Generally they consist of the complaint, answer, reply and occasionally a bill of particulars, the latter being an amplification of the first two.

THE COMPLAINT.

This is the first paper served by the plaintiff upon the defendant which apprises the latter of the nature of the plaintiff's demand, the cause of action. It may be verified — that is, sworn to — or not. It usually closes with a demand for judgment, or a prayer for relief, upon the facts therein set forth. To this the defendant may serve, an

ANSWER.

This paper either admits the facts, the cause of action set out in the complaint, and sets up a claim or demand against the plaintiff, or it may deny the whole or a part, or deny a portion and admit the balance of the complaint. The complaint may be as effectually admitted by the silence of the defendant in his answer as by a specific admission. The answer is just what its name signifies: Whatever answer the defendant has to make to the claim of the plaintiff. In addition the answer may set forth a

COUNTERCLAIM OR SET-OFF.

That is, it may ask to have allowed a claim, counter to, i. e., against that of the plaintiff, and if the amount claimed exceed that of the plaintiff's claim, it may demand judgment against the plaintiff for the excess. If the answer contain a set-off — i. e., setting off one claim against another — it is practically the same as a counterclaim, except that no judgment for excess can be given a defendant who pleads a set-off. When the answer simply denies all the claims of the complaint, it is termed a "general de-

nial." To the defendant's answer setting up new matter in the form of a counterclaim or set-off, the plaintiff may serve a

REPLY,

which contains whatever reply the plaintiff desires to make to the defendant's claim and demand set forth in his answer. In New York this is the last pleading served in the case. When the complaint does not specify the items of the plaintiff's claim, the defendant sometimes demands

A BILL OF PARTICULARS.

This is merely an itemized account of the plaintiff's claim. Likewise, the plaintiff may demand such a bill of the defendant's counterclaim or set-off.

At any stage of the trial, a motion may be made by either plaintiff or defendant to amend a pleading by changing its phraseology, or by adding to it allegations not before contained in it. A full statement of this motion, including the language of the amendment, should be incorporated in the stenographer's notes, as well as objections, rulings of the Court and exceptions, if any be made or taken.

Under what is termed the

COMMON LAW PRACTICE,

in vogue in some States, but now substantially abrogated in the State of New York, the complaint is designated the declaration, the answer is called the plea, after which follow the replication to the plea, the rejoinder to the replication, the rebutter to the rejoinder, closing with the surrebutter.

CHAPTER V.

A DAY IN COURT (continued).

THE TRIAL of a law-suit may be likened unto the painting of a picture, or the production of a play upon the stage. It has its central figures, its foreground and background, its lights and its shades. The principal issues — the questions of law and of fact — are the central figures in the foreground, while the collateral issues correspond to the side lights and shadows. As the latter tend to give effect and tone to the principal subject, so do the collateral issues cast light upon the main questions in the case. There is, however, this difference: in the instance of the painting, the incidental features mentioned are, from an artistic point of view, absolutely necessary, and, if curtailed, destroy the impression sought by the artist upon the beholder's sight and taste; while, in that of a trial, the testimony, bearing upon the collateral issues, may, at times, be clothed in abbreviated verbiage without lessening the integrity of the record.

A perfect record of a trial will not contain every word uttered by the participants. That would be defective work. Such a report might be made by a mere shorthand-writer, capable of writing at a faster rate of speed than, so far as known, has yet been at-

tained by any one, save the recently graduated youth of a three-months' course "college." It has never been accomplished in actual practice. It can be done by the use of the phonograph, a machine. The court reporter must be anything but a machine. The ideal record of a trial omits much mere language used, while showing every step, every point and all the proceedings, fully and accurately. It is a true pen-photograph of what occurs, developed from the clouded negative. To make such a report of a trial requires a high order of skill and knowledge, and much experience.

A jury having been obtained, the case opened and the preliminary motions relative to the pleadings disposed of, the

EXAMINATION OF WITNESSES

is begun by the plaintiff — unless the affirmative of the issue has been accorded to the defendant, in which case the latter opens to the jury. The name of the witness is called, and, if he respond, he comes forward to the witnesses' chair. The court crier presents to him the Bible, upon which the witness places his right hand and the former drawls out the word "On!" The clerk of the court administers the customary oath, the crier commands the witness to "kiss the Book," which he does, and the venerable crier, in a sonorous voice, in a long-drawn syllable, upon which he lovingly lingers as he imparts to it a strong nasal twang, sings out the word

"S-W-O-R-N!"

Some persons have scruples against being sworn by "kissing the gospels," and are

AFFIRMED

instead. This ceremony is performed by the substitution of the word "affirm" for the word "swear" in the oath, which is administered to the witness, who stands with his right hand uplifted.

Sometimes the witness is unable to understand or speak English, or comprehends and speaks it so imperfectly that the assistance of an

INTERPRETER

has to be obtained. Interpreters are sworn to truthfully interpret between the court and jury and witness the testimony given by the latter. The stenographer will make no entries in his minutes of these proceedings except the name of the witness, written in bold longhand characters, and if he be plaintiff or defendant, that word in shorthand following the name, and the name of the attorney who examines him (see page 39). If a witness other than the plaintiff or defendant be sworn, in the place of writing "plaintiff" or "defendant" after the name, enter in shorthand the words "for plaintiff" or "for defendant," as the fact may be. If an interpreter be sworn, enter his name in longhand, followed with this statement in shorthand, "sworn in the case as an interpreter." The reason of writing in longhand the

NAME OF THE WITNESS

is to make it conspicuous, that it may readily be found in a mass of "hen-tracks." It may be laid

down as a general rule, worthy of close adherence, that the first time a name occurs, it should be written in longhand. Thereafter it may be written in shorthand This plan will serve two very important purposes, viz.: first, to leave no uncertainty as to the name used, and second, to aid in finding quickly the portions of testimony in which it occurs. The context is entirely unreliable, in almost all cases, to correctly read a name written in shorthand. Having indexed the name of the witness, and the page of the notes upon which it appears, upon the "temporary memorandum" sheet (upon which the names of all of the witnesses, with the page, for the purpose of an index, should likewise appear) the stenographer is ready for

THE DIRECT EXAMINATION OR EXAMINATION IN CHIEF.

The *object* of this examination is to produce testimony bearing upon some, or all, of the allegations of the complaint — to place before the jury the facts, or some of them, which constitute the elements of the plaintiff's claim, or of the defendant's denial thereof The *scope* of the examination varies in different cases. It may be simply to prove the execution of a promissory note, or of a contract, or the delivery thereof, which requires not more than a dozen questions and answers; or, it may last for a day, and consist of the rapid detailing of conversations with the defendant or others; the statement of acts and occurrences, or the description of an injury to the plaintiff by the negligence of a railroad company. Usually the examining attorney begins by the

PRELIMINARY QUESTION:

Q. Are you the plaintiff? following it with interrogatories respecting the age, place of residence, acquaintance with defendant and occupation of the witness. Among the very best court reporters two methods obtain with respect to making up the record of these questions and answers. The majority of them write the question and answer in full. Others use the

NARRATIVE FORM,

which consists of a statement of the proposition asserted by the question and answer. To illustrate: Suppose the following to be an exact transcript of what occurs:

"Q. You are the plaintiff?"

"A. I am."

"Q. What's your age?"

"A. I am 23."

"Q. Where do you reside?"

"A. In New York."

"Q. What is your business?"

"A. Well, I'm not doing anything just now; but I have been engaged in practicing law."

"Q. You know the defendant?"

"A. Yes, sir; to my sorrow."

This would be written in the narrative form as follows: "I am the plaintiff; my age is 23; I reside in New York; I am not doing (or engaged) in any business, but I have been engaged in practicing law; I know the defendant." The use of the narrative form, in the instance above given, turns out as accurate a report of the proceedings, as far as illustrated

above, as the question-and answer style. The statement of every fact testified to by the witness is as faithfully spread upon the minutes as if the whole question and answer had been written. Exception may be taken to the omission of the words "to my sorrow" in the last answer. They are intentionally and properly omitted, being irresponsive to the question, and immaterial to the issue; and, if objected to upon those grounds, in connection with a motion to strike them out for that reason, would be stricken out by the Court. It often happens that such a voluntary statement will be appended by the witness to an answer that fully and completely replies to the inquiry of counsel; the opposing counsel moves on the grounds stated to strike it out. The Court turns to the stenographer remarking "I don't suppose the stenographer took it; if he did, it may be stricken out." Generally, when the objection is made, the counsel upon whose examination the irresponsive answer occurred, instantly consents to strike it out. The stenographer will save his nerve-force and relieve the monotonous tedium of note-taking by omitting to record such clearly irresponsive answers. Still, judgment and discretion must be exercised in respect to this matter. It may happen that an irresponsive, voluntary statement tacked to an answer by a witness upon direct-examination will be referred to by the cross-examining counsel, and a number of questions may be based on it. If the voluntary statement is as irresponsive as that instanced above, the stenographer cannot properly be criticised or censured for omitting it. It is unhesitatingly stated,

that it is unnecessary to use the question-and-answer method in reporting these preliminary questions. It may at the option of the stenographer be used. It is not necessary, for the reasons above given, and for the additional reason that it lessens the expense of transcripts, especially in long cases, and, at times, cuts down printers' charges for printing the case for use upon appeal.

The narrative form is used by some first-class court reporters in taking parts of testimony relating to collateral and incidental issues. One instance of this will suffice to illustrate its application. The character of a witness may be impeached by the testimony of witnesses that his reputation, in the community wherein he resides, for truth and veracity, is bad. This testimony may be rebutted, by the party calling the witness whose character is attacked, by the testimony of other witnesses to the effect that the character of the witness in this respect is good. When both plaintiff and defendant have introduced testimony upon this subject it raises a question of fact for the jury to pass upon. It is a collateral or incidental issue, to the main or principal issues in the case. The most of this testimony is sometimes taken by some stenographers in narrative form. Extended use of the narrative form is unadvisable; its judicious use is to be commended, and in justice to the pocket-books of litigants, ought to be resorted to whenever practicable without impairment of the record. It demands on the part of the stenographer close and intelligent attention to the subject-matter reported, and the ability to at least "carry" a question and answer.

It is more feasible with a witness who speaks deliberately and grammatically than with one who is jerky and ungrammatical of speech. Incidentally it may be stated, that

THE RAPID WITNESS,

who clothes his ideas in grammatical language distinctly uttered, is more easily reported than he who speaks moderately fast, but interjects such words as "he says, says he," speaks a part of a sentence, changes it, "goes ahead and backs up" and jumbles words, sentences and parts of sentences in intricate confusion. Let the utterance of the last witness be indistinct or let him talk rapidly, and he will cause a stenographer a great deal of trouble. Heroic measures must then be resorted to. Insist upon a witness repeating answers that are jumbled and indistinct, letting him understand, if possible, the reason for the repetition. He will then usually make an effort to do better.

While alluding to the rapid witness, some suggestions may be given to a young stenographer which will aid him, as well as his more experienced brother, in innocently stopping such a witness in a rambling statement of a conversation or of facts and occurrences. If he be hard pressed by the volubility of the witness, let the stenographer ask him to repeat names of persons and places, of dates, amounts, gestures and anything in fact that, to the observer, would appear to be a natural repetition. This suggestion has never been patented. Resort to this "trick of the trade" can be justified by precedent. Frequently in conversation, in slow dictation of

matter taken in longhand, in the comparison of papers, and in many other instances that will readily occur to the reader, the person speaking or reading is asked to repeat figures, dates, amounts and names of places and persons. It is done usually to verify the listener's understanding of the language used, and why should not the stenographer have the same opportunity? Some may say, that, upon the same principle, the entire testimony of the witness should be repeated. Not so. The context may be relied upon to verify many matters, but, as before remarked, it is unreliable as respects names, dates, amounts and gestures. Very often a question is put to the witness upon which the opposing attorney addresses the Court with

"I OBJECT."

The attorney conducting the examination, knowing, it may be, that the question is improper, asks another question before the Court can rule upon the one preceding. The opposing counsel not objecting to the last question, the witness answers it. The first question, under those circumstances, is deemed to have been waived by the attorney who asked it. It is surplusage and may be stricken out by running the pen through it — unless it be desired to "pad" the transcript. But, suppose the first question be amended by inserting or adding a modifying clause to the question, and the objecting counsel waives his objection to the amended question. The stenographer merely strikes out the objection as taken, or writes "objection waived." If, however, no objection be made to the first question, and, as fre-

quently occurs, counsel repeats it two or three times, and the proposition of the original question remains the same in its repeated forms, but clothed in different verbiage, it is unnecessary to re-write the question in its repeated form. If, as occasionally occurs, counsel desire to repeat to several witnesses a question put to some other witness, an entry should be made in the notes referring with absolute certainty to the question repeated. This can be done by stating the page of the notes on which the question to be repeated is written, and writing the opening and closing words of it, adding in shorthand, the statement, "question repeated." The remaining words may be inserted when opportunity occurs, or at the time of making the transcript. When a witness has partly answered a question, and refuses to complete the answer, or if, for any reason, the answer remain incomplete, and the examining attorney repeats the question, make this entry in shorthand: "last preceding question repeated;" or if it be the first, second or third question preceding the last that is repeated, state it in that way. The point sought to be made clear to the reader is this: prevent, as much as possible, the labor of writing and make the reference to the question repeated so definite that no doubt can afterward arise as to which question was repeated. The stenographer must constantly bear in mind that his labor is a continual drain upon his vital force and energy; that the nervous system may be taxed to its utmost capacity without interruption for hours, and his mental faculties be strained to the verge of exhaustion. These little "waits" attendant upon repeated ques-

tions in a rapid and intricate examination will give him momentary relief; and with the expedient of using the "narrative form" at times, the repetition of names, dates, etc., by the witness, and digesting, instead of reporting, arguments and objections (when the grounds of the latter are not specifically stated) will enable him to undergo the nerve and brain exhausting character of his work. These labor saving devices, inconsiderable when regarded separately, yet in the aggregate of a day's work, make a grand total that deserves the consideration of every stenographer who has regard for his mental and physical welfare. They are to the stenographer what the oases of the desert are to the weary traveller — refreshing and recuperative.

The examination of a witness by counsel may be interrupted by one or more

QUESTIONS BY THE COURT.

These and the answers made to them by the witness must be taken, the first question being introduced by the words (written in shorthand on the line above the question, and over the first part of it) "By the Court." The Court having asked such questions as desired, the counsel continues his interrogatories to the witness. The first of these should be prefaced by the words in shorthand, "By counsel," to distinguish them from those asked by the Court. It is unnecessary to write the attorney's name, that having appeared below the name of the witness when the examination began, and it will be understood that the same counsel continues the examination. If, however, a different counsel, but upon the same side of

the case as the first, continue the examination, enter the words in shorthand before the first question "By Mr. Jones" and continue the record as before. Occasionally

QUESTIONS BY JURORS

are put to witnesses. These should be treated in the same manner as questions by the Court, substituting the words "By a Juror" for "By the Court," written in the same manner and in the same place as suggested for the latter. If a question by one juror give sufficient assurance to another to ask a question, write the words "By another Juror" in the same manner and in the same place specified for the last entry. The form of the last entry may be used if several jurors ask questions. During the examination of a witness by the Court or jurors, the opposing counsel sometimes interjects one or more questions to the witness, which the latter answers. These should be taken, indicating in the same manner and place as above stated, by an appropriate entry, the name of the counsel interjecting the question. The main examination being continued after these interrupting questions by the Court, jury or counsel, write the name of the counsel conducting it before, and on the line above, the first question of the continued examination. Questions by the Court, by jurors and by opposing counsel are subject to objection, and the instructions hereafter given in this chapter respecting objections, offers to prove, rulings, holdings, remarks and exceptions apply to these three classes of questions.

Among the difficulties which the stenographer will encounter are

GESTURES OF WITNESSES.

In response to a question, a witness to an assault upon the plaintiff by the defendant, may put his hand to his head, and not utter one word. If the stenographer can write and, at the same time, temporarily watch the witness (which can be easily learned by practice) he will have no difficulty — provided he can plainly see to what part of his anatomy the witness points — in describing the gesture. Assuming that the stenographer can do this, the answer to the question will be a statement in the record of the fact, (in parenthesis) that the "witness points — or pointed — to the left ear," or "to the forehead immediately over the left eye," or "to the calf of his right leg just below the knee on the inside (or) outside." The witness may use the word "there" or "here" in indicating the spot. In either case, the word used should be taken, and the memorandum, just referred to, be written, following such word on the same line in parenthesis. The stenographer in a rapid examination will have to be a quick thinker and observer to surmount this difficulty. If he cannot "get" it, let him not hesitate to "throw the inkbottle" at the enemy — stop the witness and have him point out once — yes, twice or three times, if necessary — the exact spot referred to. It is very ludicrous to watch the maneuverings of some witnesses when asked by the stenographer to again indicate the part of the person to which he has pointed. Having first touched the right ear, on the second at-

tempt he prefaces the act of pointing with: "Well, now, I dunno, mebbe 'twas t'other ear." He then puts the tip of his index finger on the "*precise*" place; having done which he shifts uneasily in his chair, studies the ceiling for an instant, when a look of serene satisfaction steals over his face as he addresses the amused knight of the quill with, "I'll be hanged, mister, if 'twant t'other arter all." The risibilities of the hangers-on of the court-room having returned to their normal condition, the witness is asked to state which way the defendant went after striking the plaintiff He replies "Well, I dunno. What's the name o' the street — I aint much used to bein' here, but supposin' *this* to be the corner, he went off *that* way." The only treatment for an answer of this kind is to specify as nearly as possible the part of the object which the witness indicates as the corner, stating the fact in parenthesis in the answer after the word "this." For instance, if he point to the corner of the judge's bench, the counsel table or the clerk's desk, it may be stated in the case of the former in this wise: (pointing to the corner of the judge's bench). After the word "that" state in parenthesis the direction indicated by the witness as having been taken by the defendant as correctly as possible, in this manner: "(pointing to the right or left)." The last class of parenthetical statements are of little value for future reference because of being very indefinite, while the first class point with unerring certainty to some object which may be afterward identified.

OBJECTIONS AND EXCEPTIONS

are of grave importance to the stenographer. The office of the former when made to a question is to bring to the attention of the Court the reasons of the attorney making it that the question propounded to the witness should not be answered. Sometimes an objection may go to the competency of the witness, and not to the question. That is, the question is proper, but the witness for reasons stated is incompetent to testify upon the subject embraced within the question. An objection may also be made to papers offered in evidence. In fact, objections strew the pathway of the court reporter at every step in a judicial investigation.

For the purposes of this book, these will be classified into

REGULAR AND IRREGULAR OBJECTIONS.

It must, however, be understood that the terms used in this classification have no legal import. A regular objection is one in which the grounds of objection are formally stated by the objecting attorney. It has a beginning and an ending, clearly defined, and its grounds are very often numbered as first, second, third, etc. With such objections, no difficulty will be encountered. The attorney making it usually prefaces it with: "I object to the answer as —" or "If your honor please, I object to the question as —" supplementing this statement with the grounds of objection. In some States there are several grounds of objection used, beginning with the letter "I," which no doubt the reader has frequently

heard stated during the course of a trial. These are "immaterial, irrelevant, incompetent, improper, illegal and indefinite." When an attorney repeatedly urges these stereotyped objections, he is, in the language of lawyers, "getting in all the "i's." Objections, and arguments based upon them, are the delight and joy of the tired scribe. Having photographed the lingual gymnastics of a glib lawyer through the mazes and intricacies of a long cross examination of a voluble witness, suddenly the opposing counsel deftly throws the lasso of a long ten-ground objection about the throat of his opponent, and the stenographer, chuckling with fiendish glee, coolly settles back in his seat and watches the wordy contest of the combatants. A laughable incident once occurred in the trial of a case before a justice of the peace in one of the counties of New York. The justice was old and rheumatic, and had impressed into his service, as clerk, a young man, distinguished in the "deestrick" as a ready writer. One of the attorneys, noted in his neighborhood as the champion objector, had been unusually prolific in objections in the case on trial, having several times, with cool and systematic persistency, exhausted all the "i's." Beginning a new objection, and having again travelled by easy stages through all the "i's," he was about to embark on "sixthly," when the venerable dispenser of justice, rising upon his uncertain and tottering legs, with one eye on the objecting attorney, leaned over to the clerk, and in an audible whisper, said, "Charley, when he gets through, you put down objection overruled; I'm going out to get

a little fresh air," and disappeared through the doorway, leaving the dumbfounded attorney to the unsympathetic jeers of the country bumpkins who were watching the trial.

IRREGULAR OBJECTIONS

require irregular treatment. Sometimes they admit of digesting, i. e., stating succinctly the points made by an objecting attorney in a rambling argument. At other times the only safe method to pursue is to report *verbatim* the argument of the objector. A knowledge of the habit of counsel with respect to clearness of statement of propositions will enable one to determine whether to digest or report in full the argument. Some attorneys desiring to object to a question as "immaterial" will talk for ten minutes and perhaps not make use of that word; yet, if the stenographer comprehend the question before the Court and the argument of counsel, he can confidently enter in his minutes "Objected to as immaterial" knowing that such entry truthfully presents the objection made. Sometimes it is well to supplement the objection with the words "counsel insisting," then adding in condensed language the reasons given by the attorney that he regards the question as immaterial. Other attorneys, more logical of thought and precise in statement, will object in a manner similar to this: "If your honor please, I desire to object to the last question put to the witness by the plaintiff's attorney upon the following grounds: Now it appears, if your honor please, that this question calls upon the witness to perform a mental operation as to certain facts and asks him to give a conclusion

based upon those facts. This question is incompetent and improper for that reason. The question is also improper for the reason that it does not state the time and place of the occurrences therein specified and is indefinite and uncertain. And, generally, I object to the question as immaterial and irrelevant, incompetent and improper, illegal and indefinite." This objection might be digested, and should be written in shorthand, as follows:

"Objected to as incompetent and improper, calling for the operation of the witness's mind, and calling for a conclusion. Also that the question is improper, because it fixes neither the time nor place of the occurrences specified in it, it being indefinite and uncertain. And, generally, as immaterial, irrelevant, incompetent, improper, illegal and indefinite."

Having made a "regular" objection, an attorney will sometimes, during the argument ensuing upon it, urge upon the Court grounds of objections in addition to those already stated. He may intimate to the stenographer that he desires such additional grounds added to the objection already stated; or he may not. In the former case, the reporter adds the grounds to the objections already made continuing the sub divisional numbers. In the latter case the additional grounds ought to appear, as the Court may sustain the objection on those grounds, without formally stating it in the ruling. Such additional grounds of objection should be digested as above stated and added to those already written.

A custom, very much in vogue in stating objec-

tions, is, to make the same objection as before stated to similar testimony. For instance, suppose a long objection be made to a question. The Court rules that the question is proper and permits the witness to answer. Several questions, relating to the same subject-matter as that to which the objection is made, follow, to each of which the objecting counsel interposes this objection: "Objected to on the same grounds stated in preceding questions relating to the same subject," or "same objection as before." The stenographer makes this entry in his notes: "Same objection as made to similar preceding questions put to this witness;" or "objected to same as before." If objections made to questions asked a different witness are desired to be repeated, the entry in the notes will be: "Same objection as made to similar questions asked the witness (here insert the name of witness.") As the reference to a repeated question must be certain and specific, so must it be with repeated objections. No uncertainty should exist respecting the objection desired to be repeated.

Upon an objection being made to a question, the questioning attorney is sometimes called upon by the Court to state the facts which he expects to prove by the witness, in order that the Court, after hearing such statement, may rule intelligently upon the objection. This may be necessary because nothing may have appeared in the case to show that the testimony called for by the question is competent. This is called either an "offer to prove" or an "offer to show." The facts stated by the attorney in re-

ply to the court should be recorded, prefaced by the words "Plff's (or Deft's) counsel offered to prove," or "offered to show." Very often these offers are made after the Court has ruled upon the objection. In that case the opposing counsel may object to the offer. Some attorneys seldom object to an "offer to prove," claiming that it is not the subject of a ruling; and likewise some judges refuse to rule on such offers. In some States it has been decided that an offer to prove presents no proposition to the Court for a ruling. If objection be made to such offer and the Court rule upon it, it should be taken.

Regular and irregular objections may be interposed to all kinds of testimony, ranging from a deed to a burglar's "jimmie." In fact, papers, letters, maps, photographs, written instruments of all description and all kinds of tools, and implements, may be offered in evidence, and are fruitful causes of objections. These are called "exhibits," and will be treated at length hereafter.

As has been stated, the question and objection raise an issue of law, the decision of which rests entirely with the Court. That decision is termed

"THE RULING."

It is generally stated by the Court in one of the following forms: "I sustain (or overrule) the objection;" or "sustained" or "overruled" or "the witness may answer;" or "I will permit the witness to answer the question;" or, "I will allow the question." The objection being sustained, the witness cannot answer, and, of course, the ruling is adverse to the attorney

asking the question. If the Court overrule the objection, the ruling is against the counsel who makes the objection, and the result is to allow the witness to answer. No matter in what form or language the Court announces its ruling, if the effect be to permit the witness to answer, the objection is overruled; if it be to prohibit the witness answering, the objection is sustained. The ruling entered in the notes need not be in the precise language used by the Court. If the Court sustain or overrule the objection without adding any remarks of qualification or modification, the stenographer will note "objection overruled," or "sustained," as the case may be. If, however, the Court, after or before formally announcing its ruling, make what is termed a

"HOLDING BY THE COURT,"

that should be reported *verbatim*, especially if intended to be a formal statement of such holding. Sometimes certain propositions are stated to be "held" by the Court in informal language. If the stenographer fully comprehend the question before the Court, and have the aptitude to "catch" and state in concise language such holding, he may clothe it in his own verbiage, prefacing it by the words "The Court held that" etc., etc. Great caution is necessary in recording holdings by the Court. Judges are subject to the same infirmities that characterize the rest of humanity, and in announcing rulings may unnecessarily repeat words or clauses, or use inapt words to properly express the proposition held. The mechanical, the "blind," stenographer religiously puts down in black and white every word

uttered regardless of precision of statement. At this stage of the proceedings there is usually an abundance of time to carefully condense and "edit" the remarks or ruling of the Court; and, if these are the proper subjects of condensation and digesting, as before explained, it should be done. If it can be done in no other way, report the ruling or remarks in full, leaving a sufficient space below to rewrite them, at the first leisure moment, in condensed form. To do this, however, can be justified upon but one ground, viz.: a desire to cut down the cost of transcript; but this desire must never prevail at the expense of sacrificing the accuracy of the record.

The words "remarks of the Court" are intended to embrace informal remarks made by the Court which do not come up to the dignity of a formal holding or ruling, but which, in the judgment of the stenographer, *may* tend to "shade," or possibly qualify, the ruling or holding. These "remarks" may be conveniently introduced by the words "The Court remarking," following the words, "objection overruled" or "sustained." Again, the Court may ask the attorney who propounds a question to a witness to which objection has been made, whether he proposes to prove certain facts. Such inquiries and the response of counsel thereto should either be taken in question-and-answer form, or in the narrative form. If the latter method be adopted, it may be as follows: "Plaintiff's (or Defendant's) counsel, in response to the inquiry of the Court, stated that he proposed to show hereafter that" etc.,

etc. If the Court overrule the objection after such a statement of proof to be made afterward, it will generally be in this language: "I overrule the objection" or "I receive the evidence, subject to the motion to strike it out if it is not hereafter connected," stating the proof to be thereafter given. This qualification should always be taken. The record under such circumstances may be made as follows: "Objection overruled and the testimony received subject to a motion to strike it out if the plaintiff (or defendant) does not connect it," describing, of course, the proof or testimony proposed to be introduced later in the trial. It is impossible to specify every phase in which these matters may be presented, or to suggest suitable forms in which each, as it arises, may be recorded. The Court having ruled upon an objection, the attorney against whom the ruling is made,

"TAKES AN EXCEPTION"

to such ruling. "Taking an exception" is, doubtless, the most exaggerated of all instances of the technical character of legal proceedings. Blackstone in his Commentaries (Vol. 3, marginal paging 372) treats of the exception in this language: "And all this evidence is to be given in open court, in the presence of the parties, their attorneys, the counsel and all by-standers, and before the judge and jury: each party having liberty to accept to its competency, which acceptions are publicly stated, and by the judge are openly and publicly allowed or disallowed, in the face of the country: which must curb

any secret bias or partiality that might arise in his own breast. And if, either in his directions or decisions, he mistakes the law by ignorance, inadvertence or design, the counsel of either side may require him publicly to seal a *bill of exceptions;* stating the point wherein he is supposed to err * * *. This bill of exceptions is in the nature of an appeal; examinable, not in the court out of which the record issues for the trial, * * * but in the next immediate superior court, * * * * * after judgment given in the court below." The original reason for exceptions has long ceased to exist. In some States the custom of "sealing" exceptions still continues. In New York this has been abolished. It would appear sufficient for every purpose of reviewing the rulings of a court upon objections, that the objection and ruling appear upon the record, without driving the attorney against whom the ruling is made to the formality of an exception. In the State of New York "the absence of an exception will be fatal to a review by the Court of Appeals." (Baylies on New Trials and Appeals, page 125, and cases cited.) But an "omission to take an exception to a ruling of the trial court upon a question of law" —of which a ruling upon an objection to a question is an instance—"is not necessarily fatal to a review of such ruling by the General Term of the same court, in case the error committed is of sufficient importance to justify or demand a departure from the usual practice. * * * This power arises from the fact that the cause is still in the court where it originated; and that in the absence of any

restrictive statute the General Term has all the power of the Trial Term." (Id., page 125 and cases cited.) It will be apparent that in the State of New York, the taking of an exception is absolutely necessary in all cases in order to have it reviewed on appeal to the Court of Appeals, and in all but a few excepted cases by the General Term of the Supreme Court. It is therefore of the highest importance that exceptions should be noted. While upon clear proof of the taking of an exception which has been omitted by the stenographer, the Court might upon the settlement of the case permit it to be inserted in the record, yet in the absence of such proof, the Court would undoubtedly adhere to the precedent established of following the stenographer's transcript. Such an error on the part of the reporter might prevent the reversal of a judgment by the Court of Appeals; whereas, had the exception been taken, and the record truthfully kept, it might have been reversed by that tribunal.

Exceptions to rulings or remarks of the Court, may be made in a variety of forms as respects the language employed. Reference is not now had to exceptions to the charge. These will be treated separately in the appropriate place. Attorneys usually except in one of these forms: "I except to your honor's ruling," "the plaintiff (or defendant) excepts;" or simply "except;" or "I take an exception to your honor's ruling." The statement that "plaintiff (or defendant) excepts" or "plaintiff (or defendant) excepted" or "plaintiff (or defendant) excepting" will be sufficient. The other language

used may be disregarded as surplusage. It frequently happens that soon after the commencement of a trial the respective attorneys, by permission of the Court, "stipulate," i. e., agree, that "in each case that a ruling is made, the party to whom it is adverse, shall be regarded as having taken an exception." This suffices for all exceptions during the trial, and the stenographer need pay no attention to any exceptions thereafter taken, unless counsel expressly desires it. But it must be remembered, that, if the stipulation only relate to exceptions to the *admission of testimony*, it will be necessary to insert exceptions, when made, to rulings upon all objections relating to other matters. To illustrate: Such a stipulation would not cover an exception to a ruling upon an objection or motion having reference to the pleadings, to the summing up of counsel, to the charge, or in fact, anything not being or partaking of the character of testimony.

A question having been propounded to the witness, and having encountered the storms of objections, offers to prove or to show, arguments *pro* and *con* of counsel, rulings, holdings and remarks of the Court, and the exceptions to rulings, he is now expected to answer it. Perhaps half an hour or more has been spent upon this tempestuous sea of words. The witness is as thoroughly befogged, and has as completely lost his bearings as the "blind" stenographer. He is, however, suddenly brought to a realization that his time has arrived to take part in the solemn proceedings, by the examining counsel saying: "Now, Mr. Witness, will you please an-

swer the last question ?" Of course he has forgotten the question, and says so, and the counsel breaks in with, "Mr. Stenographer read it to the witness." He proceeds to do so, reaches the middle of the question and runs into a "snag," being unable, in the excitement of the moment, to determine whether the hastily-written outline is intended to represent the word "that" or "which." The Court, the counsel and the jury, the witness and the public patiently await the deciphering of the mystic symbols by "Mr. Stenographer." The "Dear Public" occupy seats in the background and give utterance to audible comments respecting the poor stenographer; the Court shifts in his big arm chair behind the Bench; counsel exchange a few words, the witness cocks his head to one side in a listening attitude while the clerk winks significantly at that important functionary, the crier, who has just awakened from a refreshing nap. Save these sounds an almost breathless silence reigns, broken by the regular "tick-a-tick" of the big clock over the door. These circumstances follow each other through the mind of the bewildered scribe in panoramic array, exaggerated in importance by the consciousness that every eye is upon him and every ear listening for the question, and that, if he fail to read it, the Mecca of his ambition: ten dollars per day and transcript fees, will be farther than ever from attainment. He sees neither the paper nor the "hen-tracks" he has made. Everything becomes blurred, indistinct and chaotic, and he is upon the point of wildly throwing up his arms and whooping at the top of his voice, when the compassionate coun-

sel — God bless him! — breaks in with, "Never mind, Mr. Stenographer, I'll repeat the question." The question being repeated with scarcely any change, the stenographer is able to easily read it, although still laboring under the effects of the ordeal through which he has passed. He now understands the reason of his inability to read the question — the shorthand character for the word "that" having been written carelessly, gave it a resemblance to the contraction used for the word "which;" and instead of calmly reading ahead, getting the context, and supplying either of the words mentioned — it would be immaterial which — he began thinking of the dire result that might follow upon his inability to read the question, and experienced a brief season of "stage-fright." Had he been quietly sitting in his office no difficulty in reading would have been experienced. This little episode having been passed, the witness

ANSWERS THE QUESTION.

Sometimes, before the answer proper is made, a conversation, more or less extended, may occur between the witness and questioner. The witness, if the question call for a conversation, asks: "Do you want me to tell *exactly* what was said?" If the question contain no modifying clause as to the statement of the conversation, and the attorney reply in the affirmative, no modification or amendment of the question is necessary. If, however, he replies, "Yes, state the conversation, or the substance of it," then insert the words "or in substance" in the

question at the appropriate place, or add it to the question at the end. Do not

"LUMBER" THE RECORD,

as it is called, with a dozen questions and answers that are immaterial. Sufficient has been said in previous chapters to indicate, as far as the subject permits, the importance of not "taking" irresponsive answers. The reporter's sense of humor will, however, at times assert itself so strongly, that he cannot refrain from preserving a few of the pleasantries of witnesses which, judged by any other test than that of humor, would be utterly immaterial. An instance of this occurred in the report of a trial some years ago. A witness was being sharply cross-examined. Some of the questions put tended to cast ridicule upon him. One question was especially suggestive. Scarcely had it escaped the lips of the examiner, than the witness replied, "I object to it as immaterial, and none of your business!" The question was, in fact, afterward objected to by the opposing counsel as immaterial, and sustained by the Court upon that ground, to the irrepressible delight of the rural witness, who regarded the cross-examining counsel with an expression that betrayed the words upon his lips: "Oh, you're no punkins!"

Great difficulty is occasionally encountered in taking the answers of witnesses, who illustrate their replies by the use of the expression "he did like this," and who then proceed to portray the conduct of the person who is the subject of the answer. That conduct may be the quaking of the knees, a wide

opening of the mouth and a closing of the eyes, accompanied with a guttural sound. Again, the witness may descend from the witnesses' chair to the sacred precincts of the bar, and, grasping the examining counsel about the throat, as if he were a wooden Indian, proceed to illustrate his answer by various thumps and whacks. A story is told of a vindictive witness, who, under pretense of illustrating his answer, shrewdly administered a sound drubbing to an attorney who had been particularly severe during the cross-examination. A witness usually picks up the nearest object for illustration purposes. This will generally be a book. He begins at one corner, to describe the peregrinations of a person, accompanying the object lesson with "there, he commenced there and ran like that to this corner," etc., etc. In all instances of illustration, report as well as you are able the illustration given by the witness. Frequently it happens that it is such a jumbled mess of "like this," "here," "there," "around this way," and "across that field," that the answer is perfectly unintelligible. It is useless to take it. Better describe in your own language, in parenthesis, that which the witness has undertaken to do. It is often impossible to catch a gesture or some other act of the witness, or, being seen, it is indescribable. In such cases, unless it is very material to have it on the minutes, insert in parenthesis at the proper place the word, "showing" or "indicating." If, in the stenographer's opinion, it is important that the record should contain a perfect description of the gesture or other act "throw the ink bottle" at counsel and witness —

stop proceedings. Ask the witness to repeat the gesture or act. If it be impossible for the stenographer to describe it, let him request the Court or counsel to do so, informing them that he does not care to take the responsibility of doing it. This will occur many times in some kinds of cases. Witnesses in response to questions respecting distances, or the height, length and thickness of objects will answer "about as long," or "so high," or "so thick," or "so far," at the same time indicating with the hand or hands. The stenographer should seldom insert his opinion, in the record, of distance or measurement thus indicated until he has requested Court, counsel or witness to state it. If, then asked to do so, he should insert it in parenthesis as follows: ("showing about two feet.") If, however, the distance, space or measurement thus indicated by the witness can be determined with approximate accuracy, a stoppage of the proceedings should not be caused, but the distance or measurement should be inserted in the notes, in parenthesis. The use of the parenthesis should be resorted to whenever the stenographer injects his own language by way of explanation into an answer, or other statement. This principle of inserting the language of the reporter in parenthesis, however, should not be applied to the digesting of objections and the other matters which have been before treated.

Allusion has just been made to the subject of interrupting proceedings. The proper rule applicable to this topic may be thus stated: Never interrupt, unnecessarily, the orderly course of a proceeding;

but, always bring the legal machinery to a complete standstill, if necessary to make the record conform to the truth. No pusillanimity should exist in the heart of the reporter upon this point. Being engaged in investigations, the character of which is of the highest importance — the administration of justice — he should feel deeply the solemnity and dignity of the part he is called upon to take, and should neglect not a single measure or expedient to perform his duty as perfectly as possible. No childish fear that the Court, counsel, jury, officers of the court and spectators may think him incompetent to write fast enough to take everything, should prevent making necessary interruptions. There is a delusion existing in the public mind that by the aid of stenography every word uttered can be reported; that a court reporter is a mere writing machine and "takes" every word. It is confidently expected that this little book will tend to dispel to some extent this illusion. Because of this, some stenographers are squeamish about admitting, by stopping a witness, or the proceedings, their inability to report and comprehend as fast as one can talk. The transcript of such stenographers will often require close examination, while, usually, confidence may be reposed in that of him who unhesitatingly stops counsel, witness and proceedings whenever necessary. It is popularly supposed, that, by the aid of shorthand question, objections, ruling, exception and answer, simultaneously uttered by the Court, by excited counsel and voluble witness, may be, amid the hubbub characteristic of such occasions, transferred to the note-book

of the reporter with consummate ease and accuracy. It may be sometimes; but, in respect to most of such occurrences, the supposition is erroneous. Being unable to "take" such a jumble of words, let not the scribe grow fainthearted and lose confidence in his powers as a reporter. If the occasion be a particularly lively "bear dance," impossible of being photographed, watch the fun until order is restored, when upon informing the Court or counsel that you did not "get any of that," the proceedings will be repeated and taken without difficulty. The necessity of repetition will seldom occur if the stenographer, as before suggested, be "on his taps."

What has been said thus far in this chapter relating to the proceedings upon the direct-examination of a witness, applies equally to the next step in the trial, known as

THE CROSS-EXAMINATION

of a witness. It seems unnecessary to state that this examination is invariably conducted by the attorney for the party against whom the witness is sworn. An attorney may be permitted under certain circumstances to cross-examine his own witness. The notes of the reporter of the latter examination would not be headed "Cross-examination." The examination itself shows it to be of the nature of a cross-examination, which is sufficient. An attorney may be surprised by the testimony of a witness called by him. Under such circumstances, he has a right to prove by the witness facts which tend to show the surprise. The proceedings would show it to be

of the character of a cross-examination, while the shorthand notes would not be headed "cross-examination." But this rarely occurs. The cross-examination is invariably confined to questions by the opposing counsel. Its object is, theoretically, to show either that the witness is mistaken in his testimony, or that he has willfully testified falsely; or, that the testimony given by him is tinged with prejudice or bias; or, that he has, in some respects, exaggerated the facts to which he has testified. The cross-examining counsel sifts and winnows the testimony thus given by the witness until nothing remains — presumably — but the kernels of truth. The scope of the cross examination is much broader than that of the direct-examination. The counsel may go fully into the motives, if any, that actuate the witness in giving his testimony, and show his relations to the party in whose behalf he is sworn, to the end that the jury may give the proper weight to the testimony of the witness. Some experienced reporters adopt what has been described as the narrative form in taking portions of the cross-examination. As before remarked, this form should only be used, if at all, as to such parts of the cross-examination which bear upon the collateral and incidental issues in the case.

When the direct-examination was first referred to in this chapter, nothing was said with respect to the manner in which it should be introduced. There is no necessity for any introductory words, as the first examination of the witness by the attorney of the party calling him is always known as the direct-

examination. There is no necessity for identifying it in any other way. It is otherwise with respect to the cross-examination. The latter should always be introduced by either the words "cross-examination" written in bold longhand characters, or by the letter "X" written in a large form in the space between the end of the direct-examination and the beginning of the cross-examination. This space should be sufficient to make the "X" thus written, conspicuous. It often happens that the direct-examination will close at about the center of the page of the note-book, or of the sheet, if loose sheets be used. In the case of the note-book, it will be advisable to continue the cross-examination in the manner just specified. If, however, the reporter use loose sheets of paper, and write upon both sides of the sheet (which is sometimes done), it is better to commence the cross-examination upon the following sheet.

Certain questions respecting conversations or acts, and the time and place of their occurrence, are frequently put to the witness upon the cross-examination, for the purpose of "laying the foundation," as it is called, of contradicting the testimony, given in response to such questions, by other witnesses to be called by the party asking the questions when he comes to introduce testimony on his side of the case. These questions give rise frequently to disputes later on in the case. A rule of evidence requires that the same questions, in substance, shall be put to the witnesses by whom it is proposed to contradict the testimony thus given. When such dispute arises, the

stenographer is usually asked to refer to, and read, the testimony of the previous witness on the cross-examination. Sometimes several days may have elapsed since the questions were put to the witness, and they will have to be found among a mass of "goose tracks," the only guide to the stenographer by which these questions may be found, being the name of the witness by whom they were given. This he easily finds by reference to the index on the "temporary memorandum" sheet. The cross-examination of the witness may have been prolonged, consuming, possibly, a day or more. It will be seen at a glance that great difficulty will be met in finding a particular question among the hundreds which have been put to the witness. The difficulty of finding a question in a record kept in longhand is great enough; but, when attempted in one kept in shorthand, is fraught with a vexatious experience that cannot be properly understood by one who has never encountered it. It is, therefore, advisable that resort be had to some expedient which will lessen the labor of the search. To meet this obstacle, many court reporters use what is styled the "indented" form of note-taking. This consists in writing the question, beginning at the left-hand margin of the paper and extending the line of writing to the right about halfway across the sheet, returning to a point upon the next line below the point at which the first line commenced and travelling again to the right to a point, coincident with the end of the first line, and so on until the question is completed. The answer to the question is begun upon the line below the question,

at a point a little to the left of an imaginary line drawn perpendicularly along the right side of the body of the question, and written in the space between that and the right margin of the paper. The advantage of this form is that it separates, clearly and distinctly, questions and answers; whereas, if questions, answers, objections and exceptions be written "solid" as it is called, i. e., without a separating space, they do not stand out well defined, the one from the other. Another expedient, that may be used in connection with the first method described, is that of drawing a waved or straight line along the margin of the question and answer at the time of writing the same, when, in the judgment of the reporter, it may become necessary to recur to it. The question or the answer, as the case may be, being thus separated, and in addition thereto a waved line drawn parallel with it, becomes quite conspicuous upon the page of notes, especially if paper four inches wide and nine inches long be used. If the stenographer deem it necessary, he may, in addition to the expedients already specified, adopt another. Along the waved or straight line thus drawn upon the margin of the question or answer, he may write one or more words in longhand, which describe the subject-matter of the question or answer. To illustrate: Suppose the question put for contradiction relates to a conversation claimed by the questioner to have occurred at a particular time and place, with a particular person, about a horse; that the tenth question following relates to a conversation between the same parties, at the same time and place, respecting

a cow, and that farther along in the examination a question of similar character relating to a wagon occurs. Opposite the first question, and along the waved line, write in longhand the abbreviation "conv." following it with the word "horse" written in longhand; opposite the question respecting the cow write in longhand the word "cow" and opposite the question relating to the wagon write in longhand the word "wagon." This method may be applied, not only to questions put to witnesses for contradiction, but to all sorts of questions to which, in the opinion of the scribe, he may be called upon, later on in the case, to refer. By using these simple methods, the reporter will have five valuable assistants in finding such questions, viz.: the name of the witness, upon the "temporary memoranda" sheet with the page of the examination (the direct, cross, or other examination); the name of the witness written in bold longhand characters in the notes; distinction made between question and answer, by separating the same; the waved line drawn opposite the question and answer, and one or more words in longhand written near this waved line descriptive of the topic or subject-matter of the answer. If the reporter be at all ingenious, other expedients will occur to him, which may be used in cases where the characters and signs above described prove ineffectual.

During the cross-examination, witnesses often add explanatory remarks to answers, the witness forgetting that upon the re-direct-examination an opportunity will be afforded him to make such explanations. Upon such answers being given, the ears of

the scribe are often greeted with "I repudiate that answer, Mr. Stenographer," coming from the cross-examining counsel. With respect to such matters two methods may be adopted: First, strike out the entire answer, if the opposing counsel do not insist that it should stand; and, second, if he insist that it stand, enter under the answer: "The plaintiff (or defendant) repudiated the last answer."

Sufficient has been said upon the subject of cross-examination. That examination having been concluded, the counsel by whom the witness was placed upon the stand, usually takes the witness upon

RE-DIRECT-EXAMINATION;

or, as it is sometimes called, the re-examination, which proceeds in the same manner as, and in the treatment of which the stenographer should apply the rules and principles stated with reference to, the direct and cross-examination. A convenient form of introducing this examination is to use the capital letters "R. D.," an abbreviation of the word re direct. Upon this examination the narrative form may, in some cases, be extensively employed; but its use should be strictly governed by what has been heretofore said respecting it. The object of the re-direct-examination is to explain, if possible, incongruous and ambiguous statements, and other matters which the cross-examining counsel may have artfully obtained from the witness. This examination is sometimes used to reiterate portions of the direct-examination, from which the attention of the jury has been drawn by the cross-examination. It may happen that testimony, intended to have been introduced

upon the direct-examination, has been omitted. This may be put in on the re-direct-examination with the same force and effect as if originally given. This examination being completed, the opposing counsel may desire to farther examine the witness upon the new matters testified to by him, which had been omitted upon the direct-examination; or to farther cross examine the witness upon the other matters called out upon the re-direct-examination. This is termed

THE RE-CROSS-EXAMINATION.

Instructions given in this chapter with respect to objections, offers to prove, rulings, remarks of the Court, and exceptions to rulings apply to the various examinations above described.

CHAPTER VI.

A DAY IN COURT (concluded).

REFERENCE HAS been made in preceding chapters to various kinds of testimony. Beside that given by witnesses, it may rest in written instruments of various kinds as well as in tools, implements and other objects, as many and different as are the subjects that occupy the attention of mankind in all walks of life. These, when introduced in evidence, are styled

EXHIBITS

in the case and are usually required to be marked, when their character makes it feasible, by the stenographer, for the purpose of identification in the future. This is usually done by writing upon the exhibit, using for the exhibits upon the plaintiff's side of the case, the letters of the alphabet, and upon the defendant's side numbers, beginning with one, or *vice versa*. For instance, if an original deed be offered by the plaintiff and received in evidence, it will be handed to the stenographer to be marked. He does so by writing the words "Plff's Ex. A," adding after the letter and just below it, his initials. If it be offered by the defendant, he should substitute the abbreviation "Deft's" and the figure "1." In his notes he should enter a description of the deed as given by the counsel offering it in evidence,

which may be in the following form: "Plaintiff offered in evidence a deed dated January 1st, 1892, from John Jones to Robert Johnson, acknowledged on the same day, and recorded in Fulton County Clerk's office on the 15th day of January, 1892, in book of Deeds, No. 79, at page 215, conveying the premises described in the complaint. Plff's A."

This form will of course be varied according to the nature of the paper offered. The words "Plff's A" will sufficiently enable the stenographer to identify, in the future, if necessary, the paper thus offered. If an objection be made to the offer of the deed, that should be noted in the manner before described. Assuming that the objection to the offer is overruled and the deed is received in evidence, after such objection, the record may be made up in the following form: "Objection overruled, the deed received in evidence and marked Plff's Ex. A, the defendant excepting." If then the deed be read to the jury by the plaintiff's counsel, state the fact on the following line, which statement may be as follows: "The plaintiff read the deed Ex. A to the jury." Exhibits are not always read at the time of their reception in evidence, being left for that purpose until the attorney who has offered them makes his argument to the jury. It may be that no objection is made to the offer in evidence of the paper; in that case, instead of using the word "offered" in the preceding form, use either the word "read" or "introduced." Official records of deeds, mortgages and other instruments need not be marked as exhibits. Difficulty is sometimes experienced by the stenogra-

pher in marking some tools and objects put in evidence. Frequently the marking of these is dispensed with; at other times a small tag may be attached to them, upon which the stenographer makes the proper memorandum. Some court reporters use rubber stamps, for the purpose of marking exhibits, one for the plaintiff's and another for the defendant's, blanks being left in the stamp for the insertion of the letter or numeral as the case may be. In a case where a large number of papers are offered in evidence, these stamps prove very useful. It is not long since that in an investigation before a committee of a board of supervisors many thousands of exhibits were marked, the stenographer travelling in consecutive order from A–1 to A–100 through the alphabet to Z–1 and so on to Z–100; then commencing on AB–1 and continuing to AB–100, and by doubling the letters in this manner partially through the alphabet again. It is generally unnecessary to take down written exhibits as they are read to the jury. The general rule stated on page 37 at the close of chapter III of this book may be applied to the taking of exhibits. Deeds, mortgages and other papers are usually recorded. Access to this record may always be had in the future by the party who desires to know the contents of such an exhibit. It is, therefore, unnecessary to "take" these, at the time they are read to the jury. It is, however, sometimes necessary to take in full letters which are read to the jury as exhibits, especially when only the original letter is in existence. In these days of letter presses and typewriters, business men and others uniformly

retain copies of their letters; and, when these are used in evidence in a lawsuit, usually one party has the original and the other party a copy. In that case, of course, it is unnecessary to record the letter when read to the jury. In fact, it may be stated as a general rule, that unless requested by the counsel to enter in the minutes an exhibit read to the jury, it need not be done. A good plan of procedure in respect to this matter is, when counsel commences the reading of a letter or other exhibit to the jury, to "throw the ink bottle" at him, by asking him if he desire a copy of the exhibit entered in the minutes. Make an entry, or omit it, according to the answer he makes.

It should be understood that a distinction exists between a "copy of a paper," the "record of a paper," the "original paper," a "certified copy" of a paper and the "certified copy of the record" of a paper. Counsel in offering papers in evidence sometimes omit to distinguish between these. Instead of announcing that the "record" of a deed is offered in evidence, etc., the statement will be made that "the deed" is offered in evidence. If the stenographer know the difference between the original and the record, he should make the entry in his notes according to the fact. If he do not know, no time should be lost by him in acquiring that knowledge.

Among the exhibits which will at first furnish the reporter considerable trouble are photographs and maps. These are generally used in cases involving disputes respecting title to real estate, in actions of negligence, brought against persons and corpora-

tions, and in some other actions. So far as the marking of these is concerned, no inconvenience will be experienced; but when shown to witnesses for the purposes of illustrating answers given by them, the stenographer will, in attempting to get such answers correctly, and reporting them intelligibly, find himself engaged in a task unparalleled as to difficulty by anything in the whole realm of law reporting, save the taking of technical testimony given by expert witnesses. The witness may point to a place indicated upon the map or photograph, and, taking that as the basis of his perambulatory remarks, glibly describe the killing of a person and a team of horses by a railroad car, giving sizes of objects, motions and gestures of persons, the shouting of bystanders, and close, from sheer lack of breath, with an account of where the scattered anatomy of the person killed was picked up. This rapid narration of events, and reproduction of acts, motions, and gestures and illustration of distances, sizes of objects, etc., may have been accompanied by the finger upon the map or photograph, pointing out the places, etc., named. It is, at times, almost impossible to pen photograph such answers. But the record *must* be made. It may be, and usually is, of supreme importance in such cases, to know the relative position of the person and horses killed and the moving car; at what rate of speed all were moving; whether or no the attention of the deceased was distracted from the impending danger, and so on *ad infinitum*. These circumstances all bear upon one of the principal issues of that class of cases, viz.: the contributory

negligence of the deceased. For should the jury find the deceased guilty of such negligence, that would defeat the plaintiff's case. The necessity for absolute accuracy in taking the answer of, and of portraying the representations of acts, etc., by, the witness can readily be seen. Hence, the reporter should not hesitate to *stop* the witness whenever he is in doubt as to the correctness of his understanding of these details, and especially with respect to the matters pointed out upon the map or photograph. The words "here," "there," etc., sound all right, and, when accompanied by the act of locating the spot referred to upon the map or photograph, are sufficiently definite to the looker-on; but, when they appear in black and white, are perfectly meaningless, if not followed by a description of the portion of map or photograph designated. The places pointed out by witnesses in such cases should be described as correctly as possible, the description being in parenthesis following the word "here" or "there," or other words used when the act of designating the spot is performed.

Testimony of witnesses may be taken out of court, in a foreign State or country, before an officer authorized to perform that power; and, when so taken and properly returned and certified to the court out of which the order to take such testimony issued, is termed a

DEPOSITION.

The reader should bear in mind in considering this species of testimony the rule laid down on page 37 respecting the omission of matters, the proof of

which rests in a record already made. Depositions thus taken are frequently read in evidence to the jury. At the time of taking them, the proceedings are similar, with respect to direct, cross and other examinations, to those upon the trial of an action in court, except that they are taken before an officer (usually denominated a commissioner) without a jury. Objections to questions may be interposed at the time of taking the deposition. The party obtaining the deposition for use, will, at the appropriate stage of the trial, announce his intention of reading it to the jury. The other party may enter a preliminary objection to the deposition. This, of course, should be taken, the same as any other objection, taking first the announcement of the proposal to read the paper. The deposition should be sufficiently described by date of return and filing in the proper office, the name of the officer before whom, and the place where, taken to identify it in future. Following this should be a *statement* of what is read. The deposition should not be taken in the minutes *verbatim*. Counsel having read a question and about to read the answer, the opposing counsel may suddenly object. But to what? The scribe has not taken the question; and no objection to it may appear in the deposition, and if there were, counsel upon the trial would have the right to amplify it. The reporter performs the simple act of "throwing the ink bottle" at the counsel who read the question, asks to have it repeated and enters it and the objection, with the ruling and exception, in the minutes. The direct-examination having been read,

the opposing counsel generally reads the cross-examination. This should be introduced by an appropriate statement which may be as follows: "Mr. Jones, Defendant's attorney, here read the cross-examination." Objections, etc., upon the cross-examination should be treated in the manner just described.

The stenographer should insist upon marking papers introduced in the case as exhibits, unless the character of the paper taken in connection with the examination of the witness sufficiently identifies it. Often, several papers will be presented to a witness for inspection, and as to each of them the counsel may ask: "Is that your signature to that paper?" If the lawyer putting the questions and exhibiting the papers to the witness be inexperienced in the trial of causes, he will invariably omit to have the papers marked by the stenographer for identification. In such a case, the transcript will not be of any value, as the record will show simply that something occurred as to papers, but, what *particular* papers, will be unknown. In all such instances, the reporter should stop counsel and either mark the paper, or refer to it by proper words of identification. In all such and similar questions, when papers or objects are shown witnesses, insert in parenthesis after the name of the paper, object or word referring to it, the word "showing," following with the number or letter of the exhibit, whether plaintiff's or defendant's exhibit, and, if it has not been marked, or, is not marked at the time of showing it to the witness, other words which appropriately describe the paper. Whenever convenient,

obtain the information necessary to make these parenthetical entries without interruption of the proceedings. Frequently, witnesses testify with respect to exhibits, while holding several of them, and refer to them as "this paper," "this deed," etc. Insist upon knowing the number or letter of the exhibit, learning which, insert it in parenthesis in the answer after the words "this paper," or "this deed," or whatever other words may be used.

Some years ago, a case, in which a large number of exhibits were introduced, was tried upon one side by an attorney, who could not have had much experience in the trial of cases. The stenographer persistently insisted upon marking the exhibits, as they were shown to witnesses, and the attorney, with equal persistency, refused to allow it to be done. The stenographer finally gave up in despair of marking any papers on that side of the case. He recollected, however, the ancient adage, that "He who laughs last, laughs best." A transcript of the case was made. That part relating to the exhibits shown witnesses was as intelligible as the average Chinese-tea-chest inscription. A short time after the transcript had been delivered, and while engaged at another circuit, the reporter was informed that an attorney desired to see him. This attorney proved to be Mr. ——, who had traveled several hundred miles to see the reporter respecting the unintelligible references to the exhibits. The latter was put to the trouble of procuring his notes; the attorney going home in the meantime and returning the next day to compare the transcript with the notes. The

attorney acknowledged his mistake in not heeding the reporter's suggestion, and went to his home a wiser man, the stenographer making no attempt to hide his satisfaction at having taught the former a good lesson.

The stenographer is too often treated by lawyers as a mere instrument or "arm" of the court. Many of them become better lawyers, have more logical ideas respecting the trial of causes, the rules of evidence and the general management of cases in court than some attorneys. It is but the natural result of their experience, the consequence of the object lessons which they are daily taught. They have the opportunity of studying the best models, both in court and in transcribing their notes. Let a stenographer select some particular branch of the work in court, and study it systematically; for instance, that of the cross-examination of witnesses. If he be also a lawyer, he will be surprised by the benefit derived from this course of study and training. When he comes to try cases, he will unconsciously adopt in the cross examination of witnesses the methods used by the best practitioners, who have occupied the same relation to this part of his education that instructors in all fields of learning hold to their pupils. No better plan of inculcating the rules of evidence can be suggested than that of the work of the court reporter. Constantly watching the trial of cases, listening to the argument of objections, the citation of authorities, rulings, remarks and charges of courts, the stenographer must be a veritable blockhead if he do not become a pretty fair lawyer. Let

not the stenographer attempt to impress this upon the public. Once a stenographer, always a stenographer, is a rule that, so far as the "Dear Public" is concerned, is enforced with strictness. In addition to this training, he will acquire a deep insight into many phases of human nature which otherwise would have been to him as a sealed book. It is unnecessary to repeat the references so often made to the shining lights of the legal profession who began the stern struggle of life at the reporter's desk in the court-room. A supreme court judge was heard to remark not long since, that Mr. X. was the best equity lawyer practicing at the bar of his county. Mr. X. a few years since was actively engaged in court reporting.

Reference has been made to

STIPULATIONS.

A stipulation is the verbal or written statement of a proposition of law, a series of facts, or an agreement to do, or refrain from doing, an act or acts, as to which the parties to the stipulation agree. All these features may be embraced within a single stipulation. The subjects of stipulations are unlimited. It is unnecessary to state that the exact language of the parties to the stipulation should be entered in the minutes. Sometimes considerable discussion is necessary before the contents or verbiage of a stipulation can be agreed upon. To take such a discussion is to "lumber" the record with useless rubbish. In such cases, request the Court or counsel to state the language in which it is desired to clothe the stipula-

tion. If, after such request, the stenographer is asked to do it, he should attempt it only when confident of his ability to express in language, which shall neither add to, nor detract from, the identical agreement of the respective counsel. If he doubt his ability to do this, it is his sworn duty to require it to be dictated. The importance of this will be apparent when it is remembered that a party to a stipulation is bound by its terms. He can neither explain nor contradict it. In almost every other instance a party may explain, contradict or show surprise, and thus get relieved from many steps taken or acts performed. But, not so with respect to a stipulation; he is forever estopped from denying, contradicting or explaining it.

Adjournments are taken for lunch and from day to day during the trial of an action in court. These should be noted in the minutes. Such entries prove valuable in deciding disputed questions of time. A sufficient entry in longhand respecting recesses is "recess for dinner (or) lunch (or) supper," introducing the subsequent proceedings upon the convening of court with "afternoon session 2 P. M." or "Evening session 7:30 P. M." The adjournment at the close of the day's proceedings may be in this form written in longhand, "Adjourned to Tuesday, October 20th, 1891, at 9 A. M.," prefacing the proceedings of the next day with the words written in longhand: "Tuesday, Oct. 20th, 1891, 9 A. M." If the examination of a witness be not finished at the time of adjournment, and it be resumed upon the convening of court, it is well to re-write the name of

the witness in longhand, stating which examination is continued, and by whom it is resumed. These longhand entries taken in connection with the entry respecting the adjournment will afterward prove valuable in searching for testimony. In some States there is a requirement of practice respecting criminal cases that at the time of adjournment the court shall caution the jury to refrain from conversing among themselves, or with other persons or listening to conversation respecting the case during the trial. When this requirement has not been declared by statute, the custom of making such a statement has grown up. It is unnecessary to enter this in the record, for this reason: A legal presumption exists that certain officers have performed their duty; and, whenever that becomes the subject of inquiry, the burden is cast upon the party alleging non-performance of proving it. If, however, during the course of a criminal trial, the Court *fail* to instruct the jury in accordance with the statutory requirement, the stenographer should note the fact of such failure in the record.

Having introduced all the testimony upon his side of the case which he deems necessary.

THE PLAINTIFF RESTS.

And so does the stenographer — for a brief period. The plaintiff may rest — that is, close his case — absolutely, or, by permission of the Court, conditionally. In the latter case the Court permits the plaintiff to reserve the right to introduce further testimony, the character of which the Court usually requires the

plaintiff to state. Sometimes the Court specifies a later time during the trial within which this testimony must be put in. The plaintiff resting or closing his case absolutely, the reporter enters in bold longhand characters the words, "Plaintiff Rested," or "Plaintiff Rests." If the Court permit this step to be taken conditionally, as just stated, there should be added to the words last quoted the words, which may be in shorthand, "reserving the right to introduce the testimony of (here insert in longhand the name of the witness) John Doe," and if the subjects as to which such witness may be examined are specified, add the proper words of limitation. Or, it may be, that the plaintiff desires to reserve the right to "introduce" a paper in evidence. In that contingency, after the word introduce, add a sufficient description of the paper proposed to be thereafter offered in evidence. Plaintiff having rested, index the page of the notes upon which it occurs upon the "temporary memorandum" sheet.

Motions for a dismissal of the complaint, or for a nonsuit, or that the Court direct the jury to render a verdict for the defendant are generally made at this stage of the case. Arguments, more or less extended, occur upon these motions, in which the testimony of the plaintiff's witnesses is discussed *pro* and *con*, as well as the principles of law involved in the case. Frequently the stenographer is required to read much of this testimony at such times. Whichever motion is made, it should be taken—fully and accurately. Sometimes the grounds of the motion are not formally stated, being presented

to the Court in the argument. The instructions, heretofore given in this chapter respecting the digesting of the points made by counsel, apply to the proceedings now being considered. It is but a few weeks since that at this stage of the case the defendant's attorney made a motion for a dismissal of the complaint and presented the points, relied upon by him for the granting of the motion, in the form of an argument to the Court, utterly ignoring the fact that the stenographer's duty was to make a record of the motion, showing each ground presented by it. The scribe mentally digested the argument, according to his comprehension of it and inserted in his notes the points so digested. This record, including the ruling and exception, consisted of fifty-seven words; a little more than half a folio. Had the argument and discussion been reported *verbatim*, the stenographer would have been kept busy writing ten or twelve folios of matter at a time, when he ought to have been resting; the defendant instead of paying three cents (the legal rate for transcript in New York Supreme Court is six cents per folio) for this record would have been compelled to pay from seventy-five cents to a dollar. This treatment of the motion appears to have been satisfactory, no objections having been made to it since the delivery of the transcript. A convenient form of introducing the statement (written in shorthand) of such motions is: "Defendant moved that the plaintiff be nonsuited" or "Defendant moved for a nonsuit," or "Defendant moved that the complaint be dismissed," or "Defendant moved for a dismissal of the complaint,"

adding to the form used the words "upon the following grounds," subdividing the grounds into first, second, third, etc., etc. If, however, the grounds be not formally stated, and it become necessary to digest them, instead of the words last quoted, use the words above suggested to introduce the motion, and add the following language: "for the reason that," or "upon the grounds that," continuing with language appropriate to show each point digested. The introductory clause should not be used before each ground digested; separate each point with a semicolon, or write the introductory statement in the form of a general heading, punctuated with a colon, and paragraphing each ground. This, as well as other forms, will be given in a subsequent chapter.

These motions having been disposed of the

DEFENDANT OPENS THE CASE.

Following this step substantially the same proceedings will occur as have been described upon the plaintiff's side of the case, and to which the instructions given will apply. The examination of witnesses, objections, exceptions, motions, arguments, rulings, offers to prove or show and remarks of the Court should be subjected to the same treatment as similar proceedings upon the part of the plaintiff, until the

DEFENDANT RESTS.

The last two words, or the words "Defendant Rested" should be entered in bold, longhand characters in the minutes. The plaintiff may again ex-

amine witnesses and introduce other testimony. This is termed

THE REBUTTAL

The object of the proceedings "on rebuttal," is to explain, modify or contradict the effect of those taken by the defendant. It bears to the case a relation similar to that which the re-direct-examination sustains to the cross-examination of a witness, before explained. Hence, its scope is limited to explanation, contradiction or modification of the defendant's case. It is during this part of a trial that the disputes mentioned in this chapter respecting testimony given by defendant's witnesses upon cross-examination arise, and requests to turn to and read such testimony occur with unpleasant frequency, if one be not ready to find and apt to read it. The "indented" method of note-taking, the index upon the "temporary memorandum" sheet, the waved line opposite questions and answers as given, are appreciated at such times. With these ready assistants, the stenographer approaches the search for testimony with light fingers and a confident feeling, knowing that its discovery will be, usually, the work of but a few minutes. Upon the rebuttal, the narrative form of note-taking may be used advantageously by the stenographer, because of its labor-saving characteristics and relief from the usual method. It is appreciated by the unsuccessful attorney, who, desirous of getting a transcript, is surprised — sometimes — to know that "the expense is not so very much after all;" and that, therefore, if his client will

not advance the transcript fees he will, as he is *exceedingly* anxious to give the appellate court an opportunity to correct the errors, which, he is firmly convinced, the trial court has committed. The plaintiff having closed upon the rebuttal, the defendant may, if any new matters have been introduced since closing his case, put in additional testimony in reply to such new matters, or other testimony given upon plaintiff's rebuttal, to explain, contradict or modify the same. Plaintiff may then "take another hand at the oars," if any facts be introduced by the defendant which the former can rebut, reply to or explain. This procedure has received the suggestive appellation of

"SEE-SAWING."

Finally, the Court calls a cessation of hostilities by declaring that "this see-sawing" is growing monotonous, and the heart of the weary scribe rejoiceth when

"TESTIMONY CLOSED"

is announced. The jury heave a sigh of relief; the clerk winks again at the venerable crier, but alas! that worthy personage is still sweetly reposing in the arms of Morpheus, unconscious of the big clock over the door gleefully ticking out its appreciation of the turn affairs have taken. The "Dear Public" in the back seats communicate to each other their prognostication of the result of the case, in tones that awaken the sleeping constable perched upon the railing of the bar, recalling him from the contemplation of a dream-picture of "double-day" juries and suppers galore.

At this stage of the trial, the various motions which have been described, may be renewed by either of the attorneys for the parties. The plaintiff's attorney may be of opinion that the testimony introduced by the defendant does not sufficiently controvert that of the plaintiff, to raise a question of fact to submit to the jury. Accordingly, plaintiff's attorney may move the Court to direct the jury to render a verdict for the plaintiff. The defendant's attorney may be of the opinion that the plaintiff has not shown facts sufficient to constitute a cause of action, and that upon all the testimony in the case there is no question of fact to submit to the jury, and hence, he moves upon those grounds that the Court direct the jury to render a verdict for the defendant. This class of motions is termed, "moving for a direction." The defendant may also renew his motion, made at the time the plaintiff rested, for a nonsuit. He may also move for a dismissal of the complaint. Either attorney may at this time request the Court to make certain rulings upon the main issues in the case. This arises usually upon the request of one of the attorneys to the Court to "hold and rule" that certain specific questions in the case should be submitted to the jury; or that there is no question of fact to submit to the jury. Of all these motions, counter motions, and requests, a faithful record should be kept by the stenographer.

At this time the Court frequently makes rulings and holdings, accompanied by remarks, which are of vital importance in the case. These rulings and holdings are generally stated with more formality

than at any other time in the trial, and the reporter should record them fully. These matters being disposed of, that period in the case upon which the eyes, and toward which the efforts, of every aspiring law-student are directed, is reached —

"SUMMING UP,"

or the presentation of the arguments of counsel to the jury. In almost all States of the Union, to the party having the affirmative of the issue, the closing argument is accorded. If, in the case on trial, the affirmative be with the plaintiff, the defendant's counsel first presents his argument to the jury; and *vice versa.* Between the close of the testimony and the charge of the Court to the jury, the reporter usually experiences a well-earned season of rest. Sometimes, however, he may be kept busily engaged in transcribing abstracts of testimony of witnesses for the use of the Court or counsel. Occasionally, counsel, having solely in view the interests of Posterity, request the "shorthand man" to preserve the logic, wit and learning with which in words of burning eloquence it is expected to demonstrate to the gentlemen of the jury that "the vile aspersions which have been cast upon the fair name and reputation of this pure woman, the defendant, are without one scintilla of truth, and were begotten in the lurid imagination of this plaintiff, who, gentlemen of the jury, is a man devoid of all sense of honor; who, by his own confession, is a blackleg, and a villain of the deepest dye; a scoundrel and a perjurer; a despoiler of virtue, and a fiend incarnate." The aforesaid "shorthand man" feeling

o'ershadowed by the solemnity and exigency of the occasion, viewing, in perspective, the unfortunate consequences of a denial of these promised *bon mots* to Posterity, yields, under the impulse of the moment, to the importunities of counsel and promises "to take 'IT.'" It was upon an occasion, similar to this, that a court stenographer consented to lend his skill in behalf of the interests of "generations yet unborn" by "bottling" the eloquence of defendant's attorney. The attorney was young, and possessed, in a marked degree, that characteristic which the "Dear Public" have sealed as the *sure* indication of true eloquence — unlimited lung power! What though his rhetoric *was* defective; his sentences ungrammatical; his historic allusions bad, and his quotations worse? Was it not sufficient that his thunder proved superlative? his grandiloquence unapproachable? his bombast incomparable? Did not his witticisms "bring down" the back seats? And as evidence of the power of his pathos, could mortal ask more than the briny tears that flooded the eyes of his fair client? With all these aids to the demonstration of the justice of his client's cause, is it to be wondered that his eloquence proved effectual in — defeating him? But, if the case were lost, the emphatic indorsement of the "back seats" had been secured; and the "shorthand-man" must write "IT" out. This was done — theoretically. A *verbatim* transcript and the existence of the reputation of the attorney were impossible. The speech must be "dressed," which was done by the scribe. So far as necessary, the original was preserved. Few sentences,

however, escaped reconstruction. Some additions were made that afterward proved particularly agreeable to the lawyer. One of these was something like this: "Gentlemen of the jury: the counsel for the plaintiff will attempt to villify the defendant. Look upon her! Note well those tear-bedimmed orbs! Let not that pallid cheek, those quivering lips and that bowed head escape your observation. They mutely plead to you in eloquence that far surpasses mine. Do *you* believe her bad? do *you* think her capable of wrong? No, gentlemen, she is as pure and unsullied as the icicle that hung from the temple of Diana!" On delivery of transcript, the prompt remittance for this effort of the humble stenographer was accompanied by a note of congratulation "for the accuracy and fidelity of the report" of the speech, which was afterward published in the county press as the "eloquent effort" of Counselor Tugmutton, of Tugmuttonville.

The stenographer will be required at times to read portions of the testimony of witnesses during the summing up. The arguing counsel may be charged by his opponent with misstating the evidence to the jury. A dispute will then arise respecting the evidence given, resort usually being had to the reporter's notes to decide it. If the stenographer follow the argument of counsel, he will know the instant the disagreement occurs to what testimony reference is made. Let him immediately, without waiting for a request, look up the disputed point. Usually by the time such request reaches him, he will have found and read the testimony. The request being

made, he reads the disputed testimony without difficulty. This plan of immediately looking up disputed parts of testimony before being requested so to do, can, frequently, be used during the examination of witnesses. By following it, the stenographer will find and read portions of his notes readily, and will acquire the reputation of being a good reader. These little "tricks of the trade" are invaluable to the practitioner, who, after a few years of experience, learns that, as in piscatorial sport "it is not all of fishing to fish," so in court work, it is not all of court reporting to scribble shorthand. It is also advisable to follow the argument of counsel to the jury, because objections and exceptions may be made and taken to portions of it. If the stenographer be listening, he knows the language, or its substance, used by counsel to which objection is made or exception is taken, and writes it in his notes with the ruling of the Court and all proceedings that take place respecting it. It may be that counsel, during the argument, reads, or proposes to read, from a book to which his opponent interposes an objection. Definite reference should be made to the book and the portion thereof which is read or proposed to be read, as well as recording the objection, etc. By studying the forms previously given respecting other matters, the stenographer will encounter no serious difficulty in the selection of appropriate language in which to clothe the entries made in his notes regarding proceedings occurring during the argument of counsel.

The attorneys for both parties having, in turn, "labored" with the jury,

THE CHARGE OF THE COURT

follows. "Charging the jury," as it is invariably termed, is an address by the Court to the jury, in which, after a brief description of the character of the action, a concise review of the facts proven in the case by the respective litigants, and a statement of the conclusions which the plaintiff and defendant contend should be drawn by the jury from such facts, he "charges" or instructs them respecting the principles of law which apply to the various questions of fact submitted to them for decision. The importance of what has been repeatedly referred to as the main, the collateral and the incidental issues will now be apparent. Theoretically, before a verdict is rendered for the plaintiff or for the defendant, the jury, in most cases, must have decided all these issues. The decision of the main issue is, generally, dependent upon the conclusions reached by the jury upon the incidental and collateral issues. So, that the Court, in charging, usually instructs the jury with respect to the order in which the questions submitted to them shall be decided. Sometimes, the manner in which the jury dispose of a question at the very threshold of their deliberations will terminate the case. The Court will first charge as to this question, instructing the jury that, if, upon examining it, they determine it in the affirmative, they need not examine any other question, but must render a verdict either for the plaintiff or for the defendant, according to the

determination of that question in the particular case. If, on the other hand, the jury determine it in the negative, they are instructed to proceed to the examination of the other questions of fact submitted to them. These various questions of fact are then consecutively stated to the jury in clear, unmistakable language. The Court, as to each question, refers to the testimony, *pro* and *con*, relating to it, or instructs the jury to recall it. As to each of such questions the Court also instructs the jury, that, if they find the plaintiff's testimony establishes the proposition contained in the question, by a preponderance of evidence, they must find a verdict for the plaintiff; if, on the contrary, they find that it does not, or, that the defendant's testimony negatives the proposition, the Court instructs them that they must render a verdict for the defendant. In some cases, several of these propositions may be so interdependent that, the statement of them, and the rules of law applicable to them, are, necessarily, very much involved. In that event, the "blind" stenographer will meet, in the "taking," and afterward in reading, his notes, a formidable and, usually, victorious enemy. Explanation of words and terms is frequently made by the Court to the jury. This being repeatedly done in charges, the experienced stenographer anticipates, somewhat, when the subject is first introduced, the language of the Court. The difference in the meaning of the terms "evidence" and "testimony" is usually explained. One judge, eminent in his profession, and upon the Bench for his wide learning and spotless

integrity, invariably charges the jury with respect to these words in language very much like this: "There is a difference, gentlemen, in the legal meaning of the words 'testimony' and 'evidence.' Oral testimony consists of the sworn statements of witnesses. It may be true or false. Evidence is the effect of testimony. It is that which carries conviction to the mind; it is that in the truth of which you have an abiding confidence."

The phrase "burden of proof" is often the subject of explanation. This is sometimes defined to be the *onus*, or the burden, cast upon a party who alleges a fact to show, by a "preponderance" of evidence, the truth of the fact. The Court usually charges the jury that, to constitute "the burden of proof," it is not necessary that the party upon whom it is thrown should produce, and give testimony by, a greater number of witnesses than the party denying it. "Preponderance" of evidence is defined to be the "weight" of evidence; i. e., its *convincing* power upon the mind. It is not unusual that the Court, in charging the jury, reads extracts from law-books and sometimes from scientific works. The reading is often so rapidly performed, that the stenographer may be unable to "get" the matter read; if he succeed in taking it, he may feel the necessity of verifying his notes by comparison with the original. In either case, the reporter should not hesitate to resort to the book from which the matter was read; and, either incorporate such matter in his notes, or make the comparison referred to. In all instances, where, for any reason, it is impossible to report the reading of por-

tions of a book, or of a paper, the opening and closing words of the part read should be taken, and a sufficient space left in which afterward to write the whole of the matter read. Counsel occasionally submit to the Court written statements of propositions of law, and request the Court to charge the jury in the language of such statements. Sometimes the Court does so. These written statements should be obtained at the conclusion of the charge, and a careful comparison be made between them and the notes. If, however, the Court refuse to charge in the language requested, the statements should be taken in the notes in the form of a request to charge, with the ruling and exception relating thereto.

The charge of "The Lightning Judge" has been a subject of wide and frequent discussion in the stenographic world. His peculiarities of speech and idiosyncracies of thought, have been the theme of the writer of indifferent prose, and the touchstone of inspiration of the doggerel rhymster.

"I mean
"Those little, piddling witlings, who o'erween
"Of their small parts, the Murphys of the stage,
"The Masons and the Whiteheads of the age,
"Who all in raptures their own works rehearse,
"And drawl out measured prose, which they call verse."

He has been painted in colors fantastic, and clothed in picturesque costume by literary dabblers. His "charge" has been set to unrythmical rhyme, and his, "Now, then, gentlemen," has been made to dance with ghostly speed in the arms of his "gentlemen of the jury." To many stenographers, he has been an object of awe and terror — a sort of verbal

cannibal, who, after disabling his victim by a series of blows from a linguistic war-club, throws the writhing wretch upon a fire of burning eloquence, about which he executes a grotesque dance to the accompaniment of the agonized groans and cries of his slowly-roasting victim. From the silvery lakes of the Pine Tree State to the Golden Gates of the Pacific coast, and from the northern wilds of British America to the Everglades of sunny Florida have been echoed and re echoed the silly vaporings of would-be chroniclers of judges' charges. In plain English, too much has been written by the uninitiated court stenographer upon the subject of the difficulty of recording charges because of the high rate of speed at which, it is popularly supposed, these are delivered; while sufficient light has not been shed upon the question of how to report a charge. It is not intended to affirm, that some judges do not deliver their addresses to the jury with a degree of speed that is astonishing. The point sought to be enforced, however, is, that this class of work is not much more difficult to the court reporter, who comprehends the subject-matter of the charge, than is the taking of testimony of witnesses. Understanding the language used, appreciating the application of the principles of law to the facts, one follows the thread of the speaker's discourse and "carries" much more in the mind than in taking testimony. There is a continuity of thought and a similarity of language in a charge, as in a speech or address upon any subject, that is favorable to this process of "carrying;" while, in taking testimony, the ideas and language reported are

the result of the operation of different minds — that of counsel and witness — with the consequence, naturally, that a series of changes occurs as respects ideas and language, and the rate of delivery of the latter. It is, undoubtedly, true, that these changes attendant upon the examination of witnesses, make the taking of testimony more exhausting to the nervous system than it would be were questions and answers the emanations of the same mind. In closing the subject of the charge, it may be stated, that, at times, the stenographic skill of the scribe will be taxed to its full extent; but, if he have sufficient skill in the application of the art to the subject in hand, he will make a satisfactory report of charges as they are delivered in court.

The most important of the remaining duties of the stenographer in the trial is that relating to

EXCEPTIONS TO THE CHARGE, AND REQUESTS TO CHARGE.

These arise at the close of the charge to the jury. There is no rule as to the order in which the respective attorneys shall present them to the Court. The nature of the exception here treated of is similar to that of an exception to a ruling upon an objection, which has been fully considered. It is the act of calling the attention of the Court to the language of parts of the charge which the attorney, taking the exception, regards erroneous either as a misstatement of the facts proven in the case, or of the law applicable to the case. After the attention of the Court has been thus called to the language which is the subject of the exception, the attorney taking it usually

"requests the Court to charge the jury" certain propositions which contain his version of the facts and his understanding of the law applicable. The Court may refuse to change the language of his charge; or, upon reflection, the language of the request may be adopted. In the first case, the ruling of the Court is usually in the following language: "I refuse to charge as requested, or otherwise or differently than I have already charged the jury upon that point." The language of the Court should be taken *verbatim*. If the Court's ruling be "I refuse to so charge," take that language. If the Court adopt the request to charge, enter in the record below the request the words in shorthand, "so charged." Very frequently, the Court, upon an exception being taken to the charge and a request to charge being made, adopts the language of the request with some modifications, which are then stated to the jury. Or, the Court may refuse to charge as requested, and proceed to amplify the charge as made upon the point contained in the request. All should be understandingly reported in full. Beside exceptions being taken to portions of the main charge, they are usually taken by an attorney when the Court refuses to charge in the precise language of his request; or, when the Court, after charging that language, proceeds to modify or limit its application. The form of an exception to the refusal to charge as requested, may be: "Defendant (or plaintiff) excepted." If the Court, in addition to refusing to charge, supplement such refusal with words of limitation or modification, the attorney making the re-

quest may except to those words. In that case, add to the first form just given the words "to the refusal to charge and excepted to the charge as made." If the Court charge the language of the request, and limit or explain its application, and the party making the request excepts, combine and use both forms of the exception. Usually one, and in a very few cases, both of the attorneys except to rulings upon requests to charge. If the Court rule with the party making the request, the opposing attorney usually excepts. To illustrate: if the plaintiff's attorney make a request, which the Court charges, the defendant's attorney excepts; and *vice versa*. The words "Plaintiff (or defendant) excepted" is a convenient, and ample form to use for the latter class of exceptions. Much care and close attention must be bestowed upon this stage of the case. As remarked in the first chapter, probably more causes are reversed upon appeal, because of errors committed by the trial court in charging, or refusing to charge propositions presented, than for any other reason. Sometimes, the fate of the case may hang upon a few words, and a careless or incompetent stenographer may bring unlimited trouble and great expense to litigants by poor work at this stage of the proceedings.

The counsel having exhausted their "requests," the Court formally addresses the clerk with "swear an officer, Mr. Clerk." The officer being duly sworn, the twelve gentlemen of the jury file out of the court-room, under his lead, by whom they are ushered into a chamber, the proportions of which may be fully eighteen feet long and as much as a dozen feet

wide, its walls tastefully decorated by the picturesque stains of stray tobacco "cuds" and the floor prettily carpeted by a generous coating of ancient dirt, in artistic conformity with its cobwebbed windows. It is here, within this spacious, well-appointed room this "private and convenient place," midst surroundings so conducive to logical deliberation upon questions of life or death, right or wrong, seated upon luxuriously easy wooden chairs, or reclining upon — the floor — that these "good men and true" are "kept without meat or drink" under lock and key "until they are discharged." Is it surprising, that, with such agreeable environment, in an atmosphere laden with the perfume of tobacco smoke, exhaled from æsthetic "corn-cobs," the peculiar phenomenon of eleven stubborn jurors and one logical juryman should be presented? In other words is it astonishing — is it not, rather, to be expected, that under such manifestly improper circumstances jurors will disagree? and that litigants will be put to a retrial of cases at the expense of their pocket-books, and to the financial emolument of lawyers?

Jurors sometimes have strange experiences. It is not a year ago that a jury was sent to deliberate upon a verdict into a room similar to that just described. Ballot after ballot was cast, but without hope of reaching a verdict. Among the jurymen was a gentleman noted for his wit, good temper and uprightness as a citizen, and as having served with distinction during the war of the Rebellion. Realizing that resort to strategic tactics was necessary in order to dislodge the enemy from its strong position,

and feeling the spirit of martial music stirring within him, he struck up "Sherman's March to the Sea," accompanying the opening words by marching to the time of that stirring song. Involuntarily, his co-jurors joined him, and the sound of their combined voices rang through the old court-house, to the regular tramp, tramp, tramp of their moving feet. The measure proved effectual. The old soldier converted his eleven stubborn colleagues to his views, and the plaintiff got a verdict.

Upon the retirement of the jury at the end of the trial, the exhibits in the case, or some of them, may be submitted to them. The stenographer should make an entry in his notes of the papers so submitted, stating, according as the fact may be, whether it is by direction of the Court or by consent of the respective counsel.

The retiring jury having fully entered upon the investigation of the case, a dispute may arise among them as to portions of the evidence. They communicate this to the Court in writing, through the medium of the officer, with a request to have such evidence read to them by the stenographer. Generally, the Court allows this to be done, and they are brought into court. The Court sometimes informs the stenographer of the request of the jury as soon as it is received. This ought always to be done by the Court, in order that the stenographer may have an opportunity to find the testimony which he is to read, while the jury are coming into court. Assuming that the jury are brought into court, the stenographer should note that fact in the minutes, also the purpose of their coming

and refer to the portions of testimony read to them, besides all other proceedings that occur in the nature of motions, requests, objections and exceptions by counsel and rulings and remarks by the Court. He should note also the fact of their return to the pleasant quarters from whence they came. When the jury come into court and render a verdict, that fact should be entered in the minutes, with a statement of its nature, and whether it is for the plaintiff or for the defendant. Sometimes, the attorney against whom the verdict is rendered asks to have the ceremony of

POLLING THE JURY

performed. This consists of calling the names of the jurors separately by the clerk, and, as each name is uttered, the clerk inquires "Is that your verdict?" A statement in the stenographer's notes to the effect, that upon request of plaintiff's or defendant's attorney, the clerk duly polled the jury, will be sufficient. If the jury, on coming into court, announce their inability to agree, it is suggested to the stenographer to take the inquiries of the Court, directed to the jury, as to whether there is any prospect of an agreement being reached, and the responses, usually made through the foreman. The Court may discharge the jury, or direct them to again retire for further deliberation. In either case, an appropriate entry should be made in the minutes of the fact.

Certain proceedings, subsequent to the rendition of the verdict, will engage the attention of the stenographer, and should be entered in the notes.

A motion for a new trial and to set aside the ver-

dict is invariably made by the defeated party. This step is taken to provide for the contingency of an appeal. A facetious attorney once remarked to a judge, who had presided at a trial upon which the attorney had been recently defeated, that there were but two remedies open to an unsuccessful lawyer: one was to take an appeal, and the other to go into the back yard and swear at the Court. There being a presumption of law that a defeated counsel *will* swear at the Court, it may be remarked, incidentally, that it is unnecessary to "take" it! The attorney making a motion for a new trial and to set aside the verdict, generally states the grounds or reasons of the motion. These differ so widely in the different States of the Union that it is unnecessary to state them. In the "Code" States, the procedure is generally pointed out by statute, and the making of the motion is a mere formality. The grounds stated should be taken, likewise the ruling of the Court, which, except in special cases, is almost invariably a denial of the motion. The attorney against whom the ruling is made takes an exception which should be noted in the minutes. In some States, there is a provision of law that, in certain specified cases — usually those of an "extraordinary and difficult" nature — the Court may make an

EXTRA ALLOWANCE

of costs to the prevailing party. The amount is generally determined by a percentage — limited to a certain rate — upon the amount of the verdict or the sum in controversy. While it is unnecessary to insert this in the minutes, yet, as it requires but a

brief statement, and may prove of convenience to the attorneys, it is well to note it.

Like the convulsive gasp of a dying man, or like the furtive hoot of a dazzled owl, when,

> " * * * * * * jocund day
> " Stands tiptoe on the misty mountain tops,"

the unsuccessful attorney pleads for

A STAY OF PROCEEDINGS,

which the Court generally grants. The meaning and effect of this is to "stay," or to use a homely phrase, "put off," the issuing of execution until a time fixed by the Court. This term varies in the different States. In some States, it is generally granted until a notice of the entry of the judgment in the clerk's office is served by the attorney winning the suit upon his opponent. An entry of this stay in the notes is unnecessary; but, as stated respecting the entry of the extra allowance of costs, it may be made.

It will be seen, by a careful perusal of the foregoing chapters, that a day in court may furnish the stenographer with much labor, mental and physical; that the book of human nature, with its diversified phases of character, will be open to him, and that the dry tedium of a trial may be lighted up with occasional shafts of wit and many rays of humor. And, when the reporter reaches the close of the proceedings of the day, a consciousness of duty faithfully performed to the extent of his ability, should pervade his mind, as he listens to the court crier, who is now fully awake, "Hear ye! Hear ye! all manner of persons who have any further business at this Circuit Court and Court of Oyer and Terminer, let

them depart hence and return here to-morrow morning, at 9 o'clock, unto which time, these courts are now

ADJOURNED."

CHAPTER VII.

A MIXTURE.

BESIDE THE Supreme Court, which, as before stated, exercises jurisdiction throughout the State, there are in the various counties of almost every State in the Union, courts of record, the jurisdiction of which does not extend — except for certain specified purposes — beyond the borders of the county. These courts are generally known as County Courts, Courts of Sessions, Courts of Common Pleas, Surrogates' Courts and Probate Courts, according to the State wherein they exist. For the purposes of this work, it may be stated that County Courts and Courts of Common Pleas have jurisdiction in civil cases of causes of action arising within the county in which the amount involved does not exceed a sum, which is usually fixed by statute in each State, except certain classes of cases of an equitable character, and except in matters relating to the probate of wills and the care and administration of estates of deceased persons. The territorial jurisdiction of Surrogates' Courts and Probate Courts, like the first class mentioned, is confined to the county, and the subject-matter of their jurisdiction is limited, usually, to the care and administration of the estates of deceased persons, and the probate of wills. In some States

these courts have jurisdiction of the estates of infants. They exercise civil jurisdiction exclusively. Besides these courts, there are courts of record, the territorial jurisdiction of which is the same as those just mentioned, having criminal jurisdiction solely. These are known in some States as Courts of Sessions, in others as Courts of General Sessions, and in others as Quarterly Sessions, etc., etc.

In the State of New York terms of the County Court and the Court of Sessions are held at the same time and place. The judge of the county presides alone in the County Court. In the Court of Sessions he is the presiding officer and he is assisted — theoretically — by two Justices of Session, referred to in a preceding chapter as "Block" justices. These adornments of the criminal branch of the court are not a part of the machinery of the County Court. Their field of usefulness is limited to the Court of Sessions. It may be said of some of these officials that their duties seem to consist, principally, in varying their moods of feeling, and facial expression, to correspond with the character of the proceedings transpiring before them — looking wise when proper, laughing and cracking a joke at the opportune time, but always on the alert to consult, *tete-a-tete*, with "his honor" in making rulings, and, at the close of the term, to receive for this labor, so exacting mentally and physically, three dollars per day. A spirit of rivalry appears to always exist between some of these functionaries as to who shall occupy the seat nearest the presiding judge. Their existence in the judicial system of the Empire State is based upon

a conception as beautiful in theory — but as farcical in practice — as that of the jury system. That theory is, that, being laymen, men of affairs, accustomed to the practical matters of life, their knowledge will aid the presiding judge in meting out justice; the ancient fiction of the law being that judges and lawyers are men who deal with theoretical and abstract principles — bookish men — and hence their judgment is not reliable upon business affairs.

At a term of these courts, civil and criminal cases may be tried without any difference in the constitution of the court other than the participation of the "Block" justices. The proceedings are the same in both courts as respects juries and other details already fully considered in the four preceding chapters. No further instructions are necessary respecting the duty of the stenographer in these courts.

The power of appointing a stenographer for these courts usually rests with the county judge. The *per diem* compensation is, in New York State under an act of the Legislature, fixed by the Board of Supervisors of the county. Usually the bulk of the business consists in the trial of criminal cases, the argument of causes on appeal from lower courts, and the trial of an occasional civil case. The proceedings upon the argument of appeals need not be reported, unless by special request.

There is one feature in a criminal case that needs consideration — the arraignment of a prisoner. For this purpose he is brought into court, the charge or accusation against him read to him by the district attorney or prosecuting officer, and he is then re-

quired to plead thereto — that is, to say whether he is guilty or not guilty. If no other proceedings be taken at that time, it is not necessary for the stenographer to make a record of what occurs. The clerk does that. If, however, after the indictment has been read to the defendant, his counsel demur thereto, or move to "quash" it, as it is termed, or, if he make any other motion, it should be entered in the minutes of the case. This may also arise in the Court of Oyer and Terminer, held in connection with the Circuit Court. It should, of course, be treated in the same way at that time.

There are some terms used in criminal cases that may need explanation. In some States, New York for instance, the sovereign power, the people of the State, prosecutes criminals: hence the name of the first party in the title of a criminal case is, "The People of the State of New York;" the prosecuted person is now, technically, known as the defendant — the same as in a civil case. Formerly, the technical term was "prisoner." In practice, the words "The People" are sufficient for all purposes of the stenographer. The full name, however, is technically proper. In other States different terms are used to identify the parties. Sometimes it is "The Commonwealth" of — Massachusetts for instance, or of other States; at other times it is simply "The State." The prosecuting attorney is differently designated. In New York State he is known as the District Attorney; in other States as the State's Attorney or County Attorney; and, in some States criminal cases are prosecuted by the Attorney-General of the State.

It may be stated as a general rule that, before a person can be placed upon trial for a crime, a grand jury of the county wherein the crime has been committed must have sufficiently inquired into the facts and circumstances connected with its commission as to enable that body to conclude that probable reason exists that the crime has been committed by one or more persons. A grand jury may be summoned and sit at a term of the Circuit Court and Oyer and Terminer, or at a term of the County Court and Court of Sessions. Except in counties where much criminal business comes before the courts, a grand jury is only in attendance at the Circuit term of the Supreme Court. The practicing stenographer in the State of New York ought to be familiar with the character of the proceedings of this body, because, by recent legislation in that State, a stenographer, under certain circumstances, may now be appointed to report them in full. Twenty-four persons are summoned from the body of the county to act as grand jurors. The grand jury must consist of not less than sixteen and not more than twenty-three persons. At least twelve grand jurors must concur in the finding of an indictment. The proceedings of the grand jury are conducted in rooms provided for them, usually within easy access of the court-room. The Court appoints one of the grand jurors to act as foreman, who is the presiding officer during their deliberations. Having reached their rooms, the work of organizing is completed by the selection of some person as clerk whose business it is to keep minutes of the proceedings including the testimony given by witnesses. No per-

son except the district attorney (unless a stenographer has been appointed to report the proceedings) is permitted, unless subpœnaed as a witness to testify before them, to be present during their proceedings, and even these two worthies are excluded from the grand jury room when the question of finding an indictment is being determined. The principal work of the stenographer in reporting the proceedings of the grand jury will be to record the testimony of witnesses. There is but one kind of examination, strictly speaking — the direct-examination. Grand jurors may question persons closely who come before them; but, technically, there can be no cross-examination. There are no objections, rulings, exceptions or motions to be taken. Therefore, very few forms will be necessary in doing this description of work. The minutes should contain the title of the case being inquired into. A very simple form for this is "The People vs. John Doe or Richard Roe," or whatever the name of the person accused of the crime may be. Following this should be a statement of the character of the proceedings, the date, place, etc. An arrangement might be made between the clerk and stenographer that would render unnecessary by the latter any entries respecting the names of the grand jurors present. A perfect record should contain the names of all grand jurors present during the proceedings; and if, during the session, a grand juror be excused, the record should show that fact, and the name of the grand juror. The only other entries necessary to be made are those relating to adjournments, the names of the persons sworn and examined and the

questions put to them and answers thereto. It is unnecessary to specify the name of the questioner or questioners. If the form given above for the heading of proceedings in cases before grand juries be thought insufficient, the following might be used with full confidence that it covers every feature necessary to appear upon the record: "State of New York, County of Fulton. Minutes of Proceedings of the Grand Jury of the County of Fulton, taken and had at the grand jury rooms in the court-house at the village of Johnstown, in the County and State aforesaid, summoned to attend at a Circuit Court and Court of Oyer and Terminer held at the court-house in Johnstown aforesaid, commencing on the 19th, day of October, 1891, and of the testimony and proceedings taken and had upon the investigation into the commission of the crime of burglary, alleged to have been committed by one John Doe, (or by some person or persons to the grand jurors unknown), on the night of July 4th, 1891, at the town of Oppenheim in the county aforesaid.

Present: John Roe, Foreman of Grand Jury (then follow with the names of all the grand jurors present, after which write the words, "grand jurors.")

(Then continue) James Dixon, Dist. Atty.; John Fastwriter, Stenographer to grand jury.

Proceedings of October 20th, 1891.

Richard Roe, having been duly sworn as a witness upon this inquest into the commission of the said alleged burglary, testified as

follows: "(Follow with the testimony of the witness.)

The witnesses having been sworn, and the jury having found an indictment or dismissed the investigation, make an appropriate entry to show those facts. Upon the examination of witnesses before grand juries a legitimate field is presented for the extensive use of the narrative form of note-taking. The work at times is very rapid as witnesses are usually prepared with their stories, and they are given *carte blanche* to tell it as rapidly as speech will permit. Resort to the expedient of "throwing the ink bottle" whenever necessary. Reporting the proceedings of grand juries will never become a very fruitful field of labor for the stenographer. By a rule of practice, the counsel of an indicted person may apply to the Court when his client is arraigned, for a copy of the minutes of testimony and proceedings taken before the grand jury. This application is often granted. It furnishes ammunition to the defendant to use against the prosecution when the case is tried. The district attorneys in certain counties have a voice in the question of appointing stenographers to grand juries, and as a rule are unfavorable to it, because the stenographer making a full record of all that occurs, the defendant's attorney who obtains a copy of the proceedings of the grand jury will get much more ammunition to use against the prosecution upon the trial than if nothing but the rough minutes of the clerk of that body were furnished.

The grand jury having determined that a crime

has been committed by a particular person, they reduce their conclusion to writing. This is called an indictment. This instrument sets forth the crime committed, the time and place of its commission, and certain other details. The number and character of the essentials of an indictment differ widely in the various States of the Union. Certain technical rules respecting forms and phraseology apply to indictments, the application of which in practice gives rise to numerous motions and proceedings upon, and after, the arraignment of a prisoner. As before remarked, these motions and proceedings should be entered upon the minutes by the stenographer. There are occasions when the suggestions given in preceding chapters regarding the digesting of objections and other proceedings and the use of the narrative form of note-taking may be applied to similar matters in criminal cases. But the stenographer should be more circumspect in the use of these expedients in such cases.

Surrogates' Courts or Probate Courts are in many counties presided over by the judge of the county. In counties where the population exceeds a specified number, the office of surrogate or probate judge is distinct from that of the county judge, or judge of the Common Pleas, as the case may be; and, of course, the county judge and the surrogate are different persons. No jurors are in attendance in these courts. The presiding officer — the surrogate or judge — decides both questions of law and of fact. The subjects which occupy the attention of these courts have been referred to in this chap-

ter. In rural counties, the stenographer will not be called upon very often to report the proceedings of these courts. His employment is usually limited contests arising upon the probate of wills. Sometimes proceedings arise respecting various matters in the administration of large estates wherein the interested parties can afford to employ a stenographer, and in these a stenographer is occasionally employed.

Contested will cases only will be considered in this connection. A will, for the purposes of this chapter, may be defined to be the wishes of a person, expressed in writing, respecting the disposition of his property, real or personal, after his decease. Certain formalities regarding the execution of a will are necessary to be observed to render it valid in that respect. Usually a will nominates a particular person or persons — termed "executors" — to carry its provisions into effect. Upon the presentation of a verified — sworn — petition to the surrogate, or probate judge of the county having jurisdiction of the matter, there is issued to every person interested in the estate of the deceased person, whose will is the subject of the proceeding, what is known as a "citation." This is a paper in the nature of a notice to the interested persons to show cause at a time and place therein mentioned why the will should not be admitted to probate, i. e., proved and decreed by the Court to be a valid and sufficient will. Upon the return day of the citation, any interested person who conceives that he has a legal reason to show why the will should not be

admitted to probate, may appear and file objections in writing to the probate of the will. The person proposing the will for probate is known as the "Proponent," and the party making objection to it is called the "Contestant." The objections may be directed to the genuineness and validity of the execution of the will, or they may relate to the *exposition* of it, that is, its construction and effect. Objections respecting the validity of the execution of the will may be based upon alleged undue, improper influence brought to bear upon the person making the instrument — termed the testator. That is, instead of being the will of the testator, it is really the will — the expressed wish, or desire — of the person exercising the improper influence. The objections may go to the mental condition of the testator. The scope of the present work will not permit extended consideration of the law and rules of procedure relating to this subject. The issue to be tried and determined is framed by the petition praying for the probate of the will and the objections filed. This issue is tried before the surrogate or probate judge without a jury. Usually the stenographer will commence his labors with the testimony upon the contestant's side of the proceeding. It is seldom that the case is completed at one hearing. In fact, it may extend over a period of a year or more, adjournments being taken from time to time. The stenographer will invariably be called upon to make one or more transcripts of the proceedings. The interim between the hearings will generally afford ample time for making these. The

proceedings respecting the swearing and examination of witnesses, objections, offers to prove or to show, rulings and remarks by the Court and exceptions are substantially the same as in the trial of a case in the Circuit Court, and the instructions already given are applicable to them. The title of the case, which the stenographer can always obtain from the papers in the cause, will be different. The appearances for the respective parties may be noted in the minutes, the same as suggested for a case at circuit. The reporter in this kind of work will, however, find portions of it very difficult. Reference is made to the medical testimony which forms a very conspicuous and important feature. Persons who are known as "experts," having knowledge of special subjects, may give an opinion upon questions of trade, skill or science from the facts proven or the circumstances noted by themselves, and, in respect to the question of sanity, the opinion, not only of medical experts, but non-professional witnesses, is, in some cases, competent. Hypothetical questions — that is, questions assuming the existence of the facts stated in them — are put to medical and other expert witnesses. These questions assume to contain a statement of the facts which the party putting them claims to be proved in the case; and upon such assumed facts the expert witness is asked — if he be a physician for instance — to state his opinion as to whether those facts indicate that the testator was, or was not, afflicted with any disease. Of course, if the witness be called by the contestant, he will, undoubtedly, be of the opinion that the testator was

afflicted with some disease. Then will follow questions showing the effect of such disease upon the mind, the direct-examination closing usually with the opinion of the witness tending to show the mental incapacity of the testator. Up to this time the examination will not have been difficult. But from the commencement of the cross-examination to the close, the scribe will find his "hands full." The witness will be questioned concerning the various phases of the disease; his opportunity for observation of it, and his experience in its treatment, interspersed with illustrations from cases which he has met in his practice. The causes of the disease and its effects upon the mind and body will not be omitted. The anatomical, physiological, biological and psychological knowledge of the disciple of Esculapius will be fully aired. These gentlemen always evince an abnormal desire to exhibit their medical learning and erudition. This is proper; they are paid to do so. Their compensation as "experts" varies, ranging from the "meek and lowly" sum of $5 per day and expenses, up to the princely remuneration of $500 per day, without expenses. In coping with this specimen of the *genus* witness, the reporter will have indescribable difficulty unless he arms himself with the proper weapon of defense — knowledge. However vague and superficial his information may be respecting the subjects upon which experts are examined, it will prove serviceable. He will find himself many times forced to read up on particular subjects, especially upon diseases affecting the nervous system. He should have at hand for reference, or obtain access

to, standard works upon anatomy, physiology, therapeutics and psychology. In lieu of a better source the library of the family physician may be resorted to. In fact, no opportunity should be neglected to increase one's store of information upon scientific subjects. It is thought that what has been written in this chapter upon this subject, read in connection with the rules and instructions laid down in previous chapters (which are applicable to the proceedings in these courts), will enable the stenographer to understandingly report the principal work which will come to him in surrogates' courts or probate courts.

A very important and lucrative branch of the law stenographer's work, consists in reporting cases tried by and before referees. Allusion has been made to the details respecting the appointment of the referee and the steps necessary to be taken, down to the time of commencing the trial. A referee may be described as an officer or arm of the court; or an instrument through which the court, in certain cases, acts. Subject to the supervision and approval of the court appointing him, a referee has substantially the same powers as the court. He has authority to rule upon objections, and to receive or exclude testimony; to direct the course of the trial, and generally to exercise all the powers necessary to control the reference. The important difference to the stenographer between trials at circuit and before a referee, is, that in the referee's court there is no jury; the trial is longer; the hearings usually occupy one or more days — seldom more than two; and one or more transcripts of the proceedings are required. These

are usually prepared between the hearings ready for counsel at the hearing subsequent to that at which the minutes were taken. The title of cases; the description of the litigants and of their attorneys; the papers in the case; the different examinations of witnesses, objections, rulings, exceptions, offers, etc., etc. – all these details are the same as in the trial of a case at circuit before a jury.

Frequent use has been made of certain terms. Beside those alluded to in this chapter, an explanation of some others which have been used in previous chapters is thought necessary. The word "Court" applies to a tribunal, clothed with the power of examining into and determining disputed questions submitted to it.

The words "The Court," used either as a singular or collective noun, refer to the person or persons authorized by law to execute the powers of a court. The term is properly used no matter whether one or more persons constitute "The Court." The term "judge" or "judges" may be, generally, used in the same sense as the words just explained. The words "party" or "parties" have a technical meaning. They refer to the person or persons bringing an action as well as to those against whom it is brought. To illustrate: It is proper to say "party (or parties) plaintiff" or "party (or parties) defendant." The words "attorney" and "counselor" are used interchangeably in those States where the distinction between attorneys and counselors has been abolished. Usually, the person who institutes an action for a party or parties plaintiff, or defends an action for a party or parties defendant, is known as the "attorney of

record;" i. e., he is the attorney "of" (or on) the "record." An attorney of record, or a party, may employ another attorney to assist in advising in the preparation of a case for trial and to assist upon the trial. Such an attorney is usually called "counsel." The last word is used either in a singular or plural sense. The terms "case," "cause," "action," "suit," "lawsuit," are used interchangeably in common parlance; and have received the sanction of the Bench and the Bar. The two last terms "Bench" and "Bar" relate, the first to the judges of courts, while the latter embraces attorneys and counselors. The word "clerk" as used means the "clerk of the court." The clerk of the county usually exercises the functions of this office. The words "appear" and "appearance" have a technical meaning. A party against whom an action is brought may "appear" either in person or by an attorney, by serving a notice to the effect that he does so appear in the action. The plaintiff or defendant "appears" upon the trial of a case either personally or by attorney by being present and *participating* in the proceedings. A party to an action or his attorney being present in court, and not taking part in the trial of the action, does not technically appear. Default in appearance is as complete by the presence and silence of a party and his attorney as if both were thousands of miles from the scene of the trial.

CHAPTER VIII.

READING AND TRANSCRIBING NOTES.

KNOWLEDGE IS valuable in proportion to its utility. Theoretical principles, unaccompanied by practical application, are as valueless as the work of the pioneer without the development of the settler. This is as true of stenography as of any other subject. Its usefulness is proportionate, to the facility and accuracy with which it may be read, first by the writer and second by others. This, perhaps, is more strictly true of the application of this art to court reporting than of any of its diversified uses. For, the court reporter may be called upon at any time to read, not only a question and answer, but large portions of the testimony and other proceedings of a trial. This too, regardless of the abstruse or simple nature of the subject matter, the speed at which it was uttered, or the precision with which the shorthand characters may have been written. It is customary in taking testimony before an examiner in causes pending in United States Courts, to have every question and answer read to the witness. In patent cases, where, of necessity, the testimony is of a technical character, abounding in descriptions of all sorts of machines, and their component parts, and the relation and interdependency of these, the ability to read one's

notes with ease and certainty is of the highest importance. It is, when brought face to face with these considerations, that the question of whether the scribe is a disciple of Mr. Longsystem or of Mr. Shortsystem sinks into insignificance. It is merely a question of being able to read what has been uttered and taken down, and to read it aloud, unhesitatingly, with, sometimes, hundreds of eyes upon, and as many ears listening to, the reader. Sometimes a stenographer is sworn, and, under oath, required to read his notes of the testimony given by a witness taken a year or more before. In such instances he may have an opportunity of reading the matter before testifying. The author had been reporting in court but a year or two, when, at a term of the Supreme Court held in W—— County (N. Y.), he was unexpectedly required to read (from his notes) to a jury the whole of a "rare and racy" slander case just reported. The testimony abounded in indecent and unclean expressions. The stenographer, naturally modest and retiring, was overcome with confusion and nervous fear at the task before him. But what could be done? Remonstrance would be futile! Refusal meant disgrace — a tacit admission of incompetency! The scheme of fainting presented itself to his excited mind; but this was impracticable as the hour of evening adjournment was near. Completely "cornered," with no avenue of escape, his modesty, fear and hesitation disappeared. He rose before the jury, cleared his voice and began to read. Resolved to do his duty, or perish in the attempt, he unconsciously warmed to the subject in

hand. Regaining complete composure, he became oblivious to his surroundings, and, with such emphasis and effect did he read, that the foul and obscene words uttered by the defendant "of and concerning" the immaculate plaintiff seemed more foul and more obscene, and the jury, in their wisdom, rendered a verdict for $50 more than that which the jury in the first case had found upon the same testimony. What indorsement of the *effect* of one's reading could have been better! We have ever since approached the work of reading our notes with a light heart and a joyful countenance, and prefer it, any time, to the exhausting labor of note-taking.

About two years ago, we were employed to read to the Board of Supervisors of Fulton County (N. Y.) about two thousand five hundred folios of original stenographic notes of testimony, taken some months previous to the reading. It required six days to read this mass of evidence, which was done in public, beginning each day at 9 A. M. and continuing until about 5:30 P. M., with short recesses. The notes had been taken quite rapidly, without expectation of reading the same, except for transcription. The rate at which the notes were read, averaged two hundred words per minute. So far as we are aware, this is the longest continuous period of time ever occupied in publicly reading original stenographic notes. This performance would have been impossible except for two reasons, viz.: first, a perfect comprehension of the subject-matter of the notes, and, second, a legible system of shorthand. The legibility of the system is founded upon the use of rational principles of

writing, natural phrasing, writing out in longhand unusual names and words, "repairing wrecked" outlines, and using small characters, written with such precision as the capabilities of the writer make possible. In other words, the system used is written with comparatively little difficulty and easily read. We have for many years given careful and comprehensive consideration to the subject of reading shorthand notes, and we feel able to offer to the practitioner, especially the young one, valuable suggestions upon it. These suggestions will be separately considered in the following order:

I. CONFIDENCE.

The corner-stone of success as a ready and accurate reader is *confidence*. Some young people are too prone to underrate their capabilities. Especially is this true of some persons who are, in fact, competent. This class should foster the feeling that their proficiency is equal to that of any other person. This will engender a spirit of assurance, which will, eventually, develop into that perfect confidence, which is the offspring of experience and practice. Consciousness of one's power will depend somewhat upon the physical condition Steady nerves and a "cool head" are essentials; and these depend largely upon habits of life. A court reporter after a hard day's work cannot plunge into a debauch extended into the "wee sma" hours of the morning. If he do, his notes of the succeeding day will be as uncertain as the walk and speech of a drunken person. "Early to bed and" late to rise should govern the habits of the stenographer in attendance at a term

of court. This bears directly upon the question of reading notes; for, the difficulty of reading stenographic notes is largely dependent upon the care and precision with which they are made. Unsteady nerves, a throbbing head and a weary body have never been conducive to delicacy of touch and accuracy in the formation of shorthand characters.

II. FINDING TESTIMONY.

One's equanimity is affected by his surroundings. If called upon without previous notice, to read from his notes, and if much time be spent in "finding the place," the stenographer, if at all sensitive to criticism, will become confused. This affects, as before remarked, the ease with which the reader performs his duty. Hence, every means which tends to reduce to a minimum the difficulty of finding a given portion of the notes of testimony facilitates the ease of reading. Experience has shown that certain expedients may be used for this purpose. First, the name of each witness should be written out in bold, conspicuous longhand. The names of the witnesses and the pages of the notes upon which they appear, should be written upon a sheet of paper, called by some, a "side sheet," but which has been before referred to as a "temporary memorandum" sheet. The commencement of the cross-examination should be indicated by either a large cross or the abbreviation "Cross Ex." This should also be so conspicuously written that, in hastily turning the leaves of the note-book, or sheets of paper, it will be quickly seen. This should be indexed upon the side, or "temporary memorandum" sheet. The remain-

ing examinations of the witness should be treated likewise. This sheet should cover every feature of the case susceptible of being indexed. The stenographer being called upon to read the testimony given by a witness respecting a particular subject, should inquire, if it be not stated, whether the statements of the witness upon the direct-examination or other examination are desired. Learning this, he refers to his side sheet, discovers the page upon which the examination from which he is to read commences, and, if he be quick of eye and thought, he can run the notes through until he finds the testimony wanted. As the testimony is being given by witnesses, he should endeavor to fix in his mind the subjects upon which they may testify. At first, this will appear impossible; but experience will enable one to do this, as well as a great many other incidental matters which upon the first blush seem impracticable. If the testimony to be found relate to the question of contradiction, the use of the indented form of note-taking, the waved line, and the writing in longhand of proper names and of infrequent words and technical terms, will prove of incalculable benefit. The young practitioner will experience trouble in remembering the subject of the testimony he is to find. To avoid this, write upon a side sheet (other than that used for indexing) a brief statement of the matter to be read. First be sure you understand what is wanted, "then go ahead." Above all "keep cool." It is impossible to over-estimate the importance of coolness. If one

become excited, he invariably performs his work indifferently, very often badly.

III. READING.

Having found the testimony to be read — read it; but without rising. Do not be afraid that the cross-eyed man in the back seat, with one eye reproachfully fixed upon you and the other studying the ceiling, may hear you. Perhaps he may be entitled to that privilege by reason of the fact that he helps pay your salary, by way of taxes. Throw your shoulders back, hold up your head, expand your chest with the pure (?) air of the court-room; clear your voice, and read — don't whisper. Read distinctly, in a firm voice, so that every man, woman and child in the room may hear. It is a duty you owe your employer — the county — as well as a sacred obligation to the profession of which, it is hoped, you are, or may become, an honored member. These physical efforts will, of themselves, tend to give you confidence. But withal, exhibit no pomposity. Simply do your duty fairly and fearlessly, and in a proper manner.

IV. THE STENOGRAPHIC NOTES

should be written as small as possible, and placed as closely together as practicable, i. e., instead of a page of notes presenting a sprawling appearance, it should appear compact. By following this method, a sharper distinction between question and answer, even in the indented form, will be obtained. Outlines of unusual words should be as freely vocalized as time permits, or the corresponding

longhand word be written over the shorthand outline. Miscellaneous matter like objections, offers to prove, remarks and rulings by the Court and exceptions should be indented, commencing at a point coincident with, or a little to the left of, the beginning of answers. At first a tendency to make large, awkward-looking outlines will exhibit itself. The only remedy is practice, accompanied by a constant effort to write small characters. Whenever a lull in the proceedings occurs, if the stenographer be not wearied, he should write in longhand unusual words and repair "wrecked" outlines. The latter is of grave consideration. A long answer of an expert witness hastily delivered may be easily read at the time of taking it. Memory, in such cases, aids the reader. But, after the notes have "cooled," and the memory grown indistinct, the indefinite character of shorthand symbols renders advisable resort to every legitimate resource to make legible and certain the exact words uttered. Especially should this rule be followed, where the context is obscure. Very often the phonographic "T" will have lost all its uprightness of character and be mistaken for its bow-bent, round-shouldered neighbor "F;" or the "straight and narrow path" which "K" ought to follow may be deserted for the uneven road pursued by "M" and "N." The cheerful "ticking of the clock" may be prostituted to the uncongenial office of "an attack of colic." A circle may "condense" an idea that, if suspended from a hook might "contain" it. In short, that should be done to shorthand notes which, applied to longhand writing, is known as "crossing

the T's and dotting the I's": Straighten the outlines; write out proper names and unusual words. The question of whether one should use shorthand characters to represent figures has occupied the attention of court reporters. Systems relating to these have been devised and published to the world by men of experience. Notwithstanding this, it seems impossible that there should be any diversity of opinion upon this subject. Arabic numerals are as easily written as their shorthand equivalents, and much more easily read than the latter. They ofttimes form one of the most important of aids to finding testimony. In a page of notes, a few Arabic numerals, with or without the dollar sign, stand out conspicuously, and the eyes of the scribe twinkle with delight when he meets their welcome countenances in a search for testimony. The advantage of their use more than compensates for any slight difference in speed, (if there be any — which is a mooted question) in favor of shorthand numerals.

V. PHRASING.

Perhaps more has been said and written upon the vexed question of phrasing, than upon any other phase of phonography. The orthodox Grahamite has, time and again, crossed swords with the natural-phrasing freethinker. Unfortunately these mimic combats have been, as a rule, waged by embryonic scribblers, and hence the results have been valueless. The *concensus* of opinion of experienced practitioners is that judicious natural phrasing is conducive to speed of writing and legibility of notes, and should be followed. Its limits must necessarily be controlled

and defined by the subject-matter. The phrases used in reporting a sermon would be impracticable in the charge of a judge to a jury. It would be the height of folly to use the phrase "Now-then-gentlemen-if-you-come to-the-conclusion" in reporting a scientific lecture. The general directions that have been given to govern this question have been as varied in character as they have been useless of application. The subject appeals so strongly to personal peculiarities that it would appear futile to present a formula that could be of much practicable benefit. For years, we have adhered to the following rule, and offer it for the consideration of the reader from a sense of duty, rather than from a belief in its value, viz.: In law reporting, words that occur together frequently, or two or more words that occur in conjunction, occasionally, and when phrased form a peculiarly distinctive outline, and combinations of words which are naturally spoken or written together — in each of these cases, shorthand characters, susceptible of being easily and legibly joined, when written rapidly, should be phrased. Never end a phrase with the pronoun "it." By "easily and legibly joined" is meant the phrasing of such words as "in this case," as distinguished from phrasing words like "give-it;" "take-it," "that-is-the-only," as distinguished from "that-it-may;" "by-the-way," as distinguished from "may-it-be;" "man-by-the-name," as distinguished from "it-may-come-to-that," etc., etc., *ad infinitum.* It is thought advisable to insert at this point such phrases as now occur to us which we have found practicable in law reporting:

NATURAL PHRASES FOR THE LAW REPORTER.

A-good-many, are-not, are-you-sure, are-you-able, as-quick-as, as-many-as, as-much-as, as-long-as, as-far-as, as-fast-as, as-is, as-has-been, as-such, as-soon-as, at-the-time, at-that-time, bill-(of)-sale, bill-(of)-particulars, can-you, defendant's-counsel, deputy-sheriff, dining-room, do-you, do-you-live-(or reside), do-you recollect, for-(the)-defendant, for-(the)-plaintiff, gentlemen-of-the-jury, great-many-times, had-been, have-been, having-been, he-would-be, he-would-not-be, horse-rail-road, how-many-years-ago, how-much, human-being, I-am not, I-can-not-be-certain, I-can't-(or can-not)-be-positive, I-could-not-say, I-could-not-swear, I-will, I-will-not, I-will-swear, I-think-it-was, I-think-so, I-think-it-would-be-worth, I-will-not-be-certain, I-will-not-be-sure, I-would-not-be-positive, I-would not-swear-positively, I-will-call-your-attention, if-you are-satisfied, if-you-come-to-the-conclusion, if you-should-find, in-this-action, in-this-case, in-this-court, in-this-indictment, in-favor, in-this-matter, in-his-own-behalf, in-regard, in-respect, in-your-presence, in-the-morning, is-as, it-is, it is-not, it-has-been, it-will-be, it-will-not-be, it-would-be, it-would-not-be, it would-have-been, just-as, lumber-wagon, market-price, market-value, measure-(of)-damages, Mr.-and-Mrs., no-doubt, night-time, on-the-contrary, on-the-other-side, plaintiff's-counsel, post-office, reasonable-doubt, reasonably-worth, self-defense, she-would-be, she-would-not-be, should-be, should-not-be, sitting-room, so-many, so-many-times, supreme-court, that-he-was, that-was, that-it-was, that-there-was-(or were), that-the-plaintiff, this-action, this-

case, this-is-an-action-(or a-case), this-matter, the-first-thing, the-first-time, there-can-be, there-is, there-is-evidence, there-is-no-evidence, there-is nothing, there-may-have-been, there-must-be, there-was-(or-were), there-will-be, thousand-dollars, water-closet, we-were, what-do-(or-did)-you-mean, what-was done, what-was-the-first-thing, what-was-said, where-do-you-live-(or reside), where-was, where-were-you, which-would-be, will-you-state, will-you-swear-positively, would-not-be-certain, would-not-say, would-not-state, would-not-swear, would-not be-positive, you-are, you-will find, you-will-not, you-will-swear, you-will-swear-positively.

VI. PUNCTUATION.

Punctuating notes cannot be omitted, without serious impairment of legibility. The period, semicolon and comma are pauses which must be understood by the reporter to make a faithful transcript. It is unimportant whether he uses the small cross, the long slanting stroke or leave a space between sentences to indicate a period. The period *must* be noted in some way, otherwise it will be impossible at times, to know with which word a sentence closes and the one following begins. This is always confusing, and leads to great annoyance. The same rule applies to clauses requiring separation by a semicolon. There may be an entire change of the meaning of the speaker, caused by placing the semicolon in the wrong place. Especially is this true when a series of clauses occur which need to be pointed off by this mark. The comma, while disregarded by many, yet must have attention. Its absence may

change the meaning of a question or answer as completely as the omission of the semi-colon. It is not long since that our attention was called to the necessity of representing the comma in stenographic notes. It had been omitted, and it was impossible to tell from the context in which of two places it ought to be inserted. If placed at one point, the meaning of the sentence was diametrically opposed to that which resulted from placing it at the other. We use the long slanting stroke for the period, and two signs similar in shape but written in opposite directions to represent the semi-colon and comma. Sometimes, instead of the sign we use a space for the semi-colon.

VII. PEN OR PENCIL?

Notes written in ink, with a pen, are generally formed with more exactness, are less liable to become blurred and are more indelible, than pencil notes. The wearing away of pencil points results in deformed outlines, and the obliteration of the distinction between heavy and light lines which, when observed, plays an important part in the question of legibility. The friction caused by the passage of pencil over paper detracts from speed of writing. The liability of pencil points to break must tend to produce a lack of confidence, which is injurious to the writer. It would seem, therefore, that pen-and-ink notes are easier and better written and read than those formed by pencil. Certainly the former have one of the essential characteristics of "a record" (which the law reporter is presumed to make) viz.: permanency. If a gold pen be used less friction will be caused by its

movement upon the paper than by any other kind of instrument used for writing. Hence a given number of marks may be made, in the act of writing, with less effort by the use of a good gold pen upon proper paper than with any other appliance used for writing. It, therefore, follows that, other considerations being the same, one will write faster and more legibly, with a gold pen than with any other implement used for that purpose. It seems unnecessary to assert that a fountain pen, if a reliable one can be secured, should be used. These are important considerations in the matter of legibility. If it become necessary to read notes at night, either in court, in transcribing or in dictating to amanuenses, clean cut, black pen notes are invaluable as respects ease of reading and the lessening of the strain upon the eyesight, already sufficiently taxed by the work of the day in court. If these circumstances do not lead the reader to the conclusion stated, then, certainly, the fact that almost all court reporters used the pen, ought to be decisive of this question.

VIII. RULED OR UNRULED PAPER?

The first time we sat down in court by the side of a "real, live" court reporter, our tender sensibilities were completely shrivelled, and our budding hopes ruthlessly crushed by this question from the reporter: "Do you own a paper mill?" We were armed with the regulation "double-column-marginal-red-line" ruled paper, of ample proportions, and supposed, like all fledglings, that we had long since passed the last stenographic and reportorial mile stone of instruction. Since that time we have

disposed of the paper mill and its product, and now use loose sheets of white paper, cut nine inches long by four and one-quarter inches wide, without ruling; having a surface that, while smooth enough to permit a gold pen to travel over it with scarcely any friction, yet permits the pen to get "hold" of it. Through one corner of each sheet is punched a small hole for binding, which indicates the top of the page. Each sheet is numbered in the corner opposite to the punched hole, the numbers ending with the last sheet of the case, the sheet only, (not pages) being numbered. Each case, composed of these sheets, is separately bound. Both pages of each sheet are consecutively written upon, the bottom of the first corresponding to the top of the second. The use of unruled paper, and the discarding of shading in writing shorthand characters, will tend to speed in writing and legibility in reading stenographic notes. By a well-known law of physics, the hand, in the act of writing, tends to move in a straight line, which tendency results in writing outlines with comparatively few exceptions in the "second" position as it is called. As to all such outlines no thought of position is necessary. If, now, shading be entirely ignored (which is advisable) every word in the language, with the exception of a few verbs and pronouns, may be written with perfect abandon, as respects these requirements, and without impairing legibility. By dispensing with ruled paper, the tendency to adopt the "second" position is enhanced. Unconsciously the writer will acquire the valuable habit of following mechanically an im-

aginary line, upon and about, under and above which, but always in close proximity to it, will be found first, second and third-place outlines. Consequently, the time work and care necessary to shade and write in position may be used, when pressed by rapid utterance, in the direction of speed; and at other times, in forming the notes with a degree of precision and accuracy, and using longer outlines, not possible with position writing and shading. Hence, upon a page of paper, a clean cut, well and fully formed pen-and-ink outline stands out conspicuously and legibly and may be read, especially by the experienced practitioner, with ease and pleasure. By writing continuously upon both sides of the sheet, the matter written is kept in a small compass, instead of being spread out upon double the number of sheets, as is the case with the method now generally in vogue of writing upon but one side of a sheet. This compactness lessens the labor of finding a particular part of a case, upon the principle that, if the entire proceedings could be written upon one sheet of paper, any portion of them might be found with one-tenth the ease as if ten sheets were used. Loose sheets are preferable to note-books, because, if necessary, in making transcripts, the sheets can be easily divided among any number of amanuenses, while difficulty is experienced in this respect with a note-book. Farther, when notes are filed away at the close of a term of court, each case can be separately filed and indexed, and, while being transcribed, much easier handled. That these methods are practicable cannot be gainsaid. They have been used and subjected

to all sorts of tests for the last score of years, and have not been found wanting. The successful reading of stenographic notes referred to at the beginning of this chapter is entitled to some weight upon the question of their practicability. But it is impossible to promulgate rules and methods suitable for all mankind. Each stenographer must study his peculiarities of temperament, and select such expedients as he finds adapted to it. We trust that the eight suggestions of this chapter will materially aid the candidate for the court reporter's table in selecting such materials for, and methods of, doing work, and in easily, confidently and understandingly reading his notes.

TRANSCRIPTS.

The act of transcribing stenographic notes is popularly supposed to consist of copying. This is erroneous. Transcription of notes partakes of the character of translation as well as of copying. Copying is mechanical, no attention being necessary to the sense or context of the subject-matter. A word occurring in the middle of a longhand sentence may be *copied* without a knowledge of the remainder of the sentence. Not so with the transcription of stenographic notes; the sense, or context *must* be closely followed in order to reproduce in longhand the idea wrapped up in the shorthand. One or more stenographic outlines of a sentence, when separately considered, may be transcribed into as many different longhand words. Frequently in transcribing testimony it is necessary to read ahead one or more questions and answers to get the sense and mean-

ing, and consequently be able to correctly decipher a character or outline. The shorthand writer will readily comprehend the obstacles here merely suggested. For the benefit of the non-phonographic reader, it may be stated, that it is absolutely necessary to the attainment of sufficient speed to accurately record the rapid utterances of speakers to omit many consonants and vowels and all silent letters; that arbitrary characters consisting, it may be, of a single stroke should be used to represent words of half a dozen letters, and that occasionally, whole words should be omitted. To these principles of elision, contraction and omission may be largely attributed the difficulty of reading, and the uncertainty in transcribing, stenographic notes. When the same combination of characters may be rendered into "tick," "tack," "take" or "took," or even "dig" or "dug," or another combination may be indifferently transcribed into "come," "coming," "came," "comb," "calm," "chyme," "acme," "cameo," etc., etc., it will be apparent that the attainments of the competent court stenographer *must* be superlatively beyond those of the mere mechanical copyist. Upon the transcription of the illusive notes of the technical testimony of an expert chemist, may depend the fate of a human being, charged with the poisoning of another. Through the ignorance of the transcriber the guilty may go unpunished and the innocent suffer. The transcript is the *finale* of the stenographer's duties; the fruition of his skill, learning and industry. If it be imperfect, no matter that he have a speed of two or three hundred words per minute.

The litigant who pays six or ten cents per folio for it, cares not at what rate of speed it was written. But he has the right to demand accuracy, and usually he insists upon this right. The advent of the type-writer has been an inestimable boon to the court reporter. By its use, two or more transcripts may be made simultaneously, whereas, to "get out" the same number by the slow and tedious pen-and-ink process necessitated a small army of copyists. It would seem needless to state that transcripts should be typewritten. It is not intended to intimate that any particular writing machine should be used, but the practitioner will find that many differences exist among those now upon the market, and that not all of them are suited to the temperament and nervous development of every operator. A machine that may be run easily, that manifolds, that has a simple key-board and, withal, is durable, will generally prove sufficient. Various methods for transcribing notes are in vogue among court reporters. A practitioner having much business usually employs one or more amanuenses to whom he dictates his notes, the dictation being taken in shorthand and the required number of transcripts made by the amanuenses; or, if the latter can read the original notes, the transcripts are made directly from those. If the services of capable amanuenses can be found to transcribe the original notes, that method is preferable to any other; but, unless such assistants can be obtained, this is a dangerous method to pursue, unless the reporter can be present to constantly supervise the work. Other reporters dictate to one or more

rapid operators of the typewriter, who turn out the transcript as fast as the matter is dictated. As a rule this method is not satisfactory, unless one or two first-class operators can be secured. If the amanuenses be rapid and accurate in the use of the typewriter, accustomed to receiving dictation and able to "carry" considerable matter in the mind, it is the best plan of transcription. Its efficiency, however, depends upon the ease with which the stenographer reads his notes, and his tact to dictate enough, and no more, to the first copyist so that the writing of it will be finished at, or a little after, the close of the dictation to the second operator. The matter dictated should be from different parts of the case, and should be divided with reference to the comparative speed of the operators. The one writing the first part of the case regularly pages the transcript, while the other temporarily numbers the written sheets to prevent confusion, the paging being afterward continued from the first to the second part of the transcript. The advantage, in this kind of transcription, of loose sheets of note paper, must be apparent. The dictator should compel amanuenses to observe the golden rule of silence, except to utter the last word dictated a sufficient time before writing it to prevent a halt in dictation. This rule can be best enforced by not heeding the questions or remarks of amanuenses. If a misunderstanding occur respecting the dictation, it should be repeated without comment. In dictating to two, there should be a change in the tone of voice. The operators sometimes finish writing at the same time. The changed tone

of voice is sufficient to indicate for whom the dictation is intended. It prevents conversation, and hence avoids confusion and saves time. There is no better teacher of the value of time than transcription of notes. This method of transcription (by dictation to two typewriter operators) is very taxing. The necessity of "keeping the place" in different parts of the notes at which each dictation ends and of being ever on the alert to know when, and how much, to dicate; the concentration of mind requisite to follow two widely different contexts; wearied with the exhausting labors of the court-room; the constant click-clacking of two typewriters — these conditions, if long continued, will undermine and irreparably injure the strongest physical constitution. And yet, to perform this difficult work, the Legislature of the State of New York, in the superabundance of its wisdom, the exactness of its justice, and with an eye single to the interests of the "Dear Public," has held out the tempting bait of — not five, but — six big pennies for every one hundred words transcribed! The statute which fixes this pittance is not only an insult to the dignity of the court reporter's labor, and a stab at his ability, training and efficiency, but it practically forces him to do that which is not required of even a convict — to give time and labor to another without remuneration therefor. The court reporter should not be compelled to transcribe testimony for less than ten cents per folio for the first copy. The most oppressive labor connected with transcription is encountered in murder and other cases, that run for a

number of consecutive days, in which "daily copy" is wanted. Unless the stenographer can secure the services of competent, trusty transcribers of his notes, it will, generally, be necessary to have an assistant with whom the labor of reporting can be divided. In the latter case the one having the first "take" should report sufficient to get the transcribers at work as soon after the opening of court each day as possible. The change in reporters is easily effected. At the end of an answer, the waiting reporter takes the seat vacated by the other, during the act of changing, listening to the question propounded, or whatever may follow the answer. It is not advisable to change during the argument of objections, or during other proceedings, a thorough understanding of which depends upon what has previously transpired and of which the waiting reporter is ignorant. The reporter dictating the second "take" of the day divides the matter to be dictated according to the comparative speed of the amanuenses, and continues the dictation from the point at which the first ended. The last "takes" of the day should be so regulated as to length that the time, necessary to conclude the dictation during the evening, will be as equally divided as may be between the reporters. If feasible, it will be advantageous, when two reporters are engaged upon the same case, to have two additional transcribers for the evening work. The daily-transcript feature of reporting in the country, where, under ordinary circumstances, much trouble is experienced in securing competent amanuenses, is exceedingly annoying. Reporters, whose work is confined to the

large cities, have little, if any, difficulty in making satisfactory arrangements to meet the most exacting demands for transcript. The reporter who can obtain, whenever necessary, the help of a capable court assistant, who uses the same system as, and easily reads the notes of, the reporter, is fortunate. If, in addition, he can secure, whenever needed, the services of competent amanuenses, he ought, if he have a sufficiency of business, to be a very happy individual.

It seems unnecessary to refer to the process of duplicating transcripts. Of course, when the original is made upon the typewriter, additional copies are obtained by the use of semi-carbon paper. When pen-and-ink duplicates are made, sufficient copyists, beside those to whom the original is dictated, should be employed to turn out the copies, not quite, but nearly, as rapidly as the transcript. The paper to be used for transcripts is the subject of legislation in some States. A statute of the State of New York requires that it shall be ten and one-half inches in length, eight inches in width, and that the transcript shall be bound upon the side of its greatest length. When transcripts are typewritten, the paper should be unruled, except marginal rulings,which, according to the taste of the stenographer, may be used or omitted. But, for the convenience of counsel, the left margin of each page should contain numbers, beginning at the top with the figure 1 and continuing consecutively down the page, the space between the figures corresponding to that between the lines of typewritten matter — about five-sixteenths of an inch — as shown in Chapter X. Transcripts made

upon this kind of paper, and bound in the form indicated, upon the left side, possess many advantages over those made upon paper not having numbered lines. A completed transcript may be divided, with respect to the form and order of its contents, into

I. Title of the Court.
II. Name of the County.
III. Title of the case, i. e., the names of the parties.
IV. Introductory statement of what county, at what term and before whom tried.
V. Name of city or village where tried, and date of commencement of trial.
VI. Brief statement of character of action.
VII. Appearances, i. e., names of attorneys and counsel for respective parties.
VIII. Examination of jurors.
  a. Statement of empanelling jury and opening case.
IX. Testimony.
  a. Name of witness.
  b. By whom examined.
  c. Direct-Examination, or Examination in Chief.
  d. Cross-Examination.
  e. Re-Direct-Examination, or Re-Examination.
  f. Re Cross-Examination.
  g. Questions.
  h. Objections.
  i. Offers and motions.
  j. Rulings and remarks by Court.
  k. Exceptions.
  l. Adjournments.
  m. Plaintiff rests (or rested).

n. Motions for nonsuit; to direct a verdict; for a dismissal of the complaint, etc., etc.

o. (The same subdivisions of proceedings from IX down to subdivision "n" both inclusive).

p. Defendant rests (or rested).

q. Rebuttal testimony of plaintiff.

r. Rebuttal testimony of defendant.

s. Testimony closed.

t. Renewal of motions, etc.

u. Charge of the Court.

v. Exceptions to the charge, and requests to charge.

w. Proceedings upon and subsequent to retirement of jury: (1) Jury retiring; (2) papers submitted to them; (3) further instructions to jury when requested by them; (4) verdict or disagreement; (5) motion for extra allowance of costs; (6) motion to set aside the verdict and for a new trial; (7) ruling upon such motion and exception to ruling; (8) stay of proceedings.

There should be an index of the name of each witness; the page upon which each examination of the witness commences; the page upon which plaintiff and defendant rested; the page at which the testimony closed; and the page at which the charge to the jury begins. Some reporters index exhibits. This may be omitted. It is seldom inserted. The index may appear in the front of the transcript, upon the page preceding that upon which the case commences; or it may be placed in the back of the book. If the

first method be followed, head the index with the title of the court and names of parties, and append the statement of the reporter's name and address in this form: Reported by

John Fastwriter, Sten.,
Shorthandville, N. Y.

If the index be placed in the back of the transcript, write the title of the court, names of the parties and the reporter's name and address, in the form just shown, upon the fly-leaf in the front of the transcript. The transcript being ready for binding, a cover suitable to the bulk of the case should be used. A small transcript may be bound in the heavy paper used by lawyers for covers for legal papers. For large transcripts, covers of heavier and more durable material should be selected. The judgment of the reporter must, as respects these and similar details, be relied upon. The transcript should be bound, indexed and arranged with reference to convenience, durability and neatness. It is unusual for court stenographers to compare a transcript made by themselves with the original notes, for the detection of errors or omissions. Sometimes this is done as to important parts of the case, expert testimony, etc. A different rule prevails when transcripts are made by amanuenses, unless the latter are capable and painstaking. Even then comparison should be made of the parts of a case just referred to.

It is customary to estimate the number of folios in a transcript. To make an actual count (which one court has held to be necessary under certain circumstances) would be an interminable job, and

worth more than to re-write the transcript. A piece of mechanism for counting words has been devised which may be attached to the typewriter. As we have never used it, we know nothing of its merits. The practicable method is to estimate the number of folios. Experience will soon teach the practitioner how to make an approximately accurate estimate. He should never over-estimate the amount of the work. Rather give the purchaser of the transcript the benefit of a hundred folios than to make an overcharge.

The stenographer has the same lien upon a transcript for his fees for making it that the Common Law gives to a mechanic upon an article which he has made or upon which he has performed work, labor and services. The nature of that lien is the right to hold the article until the amount due the mechanic for such work, labor and services is paid. If, when such amount becomes due, the debtor do not pay it, the artisan has the right (by taking the proper procedure) to foreclose his lien and sell the article, and, of the money realized upon such sale, to retain sufficient to liquidate the amount of his lien and defray the expenses of the foreclosure. Possession of the transcript by the stenographer is essential to the life of this lien. If he voluntarily part with the possession of it, he loses his lien, and must resort to the ordinary remedies to enforce his demand against his debtor. Let the young court stenographer be upon his guard against the smooth, plausible, oily-tongued attorney, whose promises are as easily made as broken. The majority of the

members of the legal profession are honest, and honorable, and to them the stenographer may deliver transcript and implicitly rely upon their promises of payment. But, there are lawyers who will beat the stenographer with impunity. They care not that he has expended his hard-earned dollars for their convenience in the payment of copyists; neither do they care for the days and nights that he has bent over the typewriter and pounded its keys until his finger-tips have become as numb as the consciences of these "dead-head" attorneys. No, not they! They are *sui generis*. They belong to a species of human parasite that infests the body politic, and which may, ordinarily, be recognized by its peculiar habits and appearance. Their statements are as certain and definite as the movements of a flea, and their promises as stable as the colors of the chameleon. Place no confidence in them. Experience will lead the practitioner to the conclusion which we reached years ago: Do not deliver transcripts to an attorney whose reputation for honesty is doubtful, without payment therefor, unless his client be financially responsible. Never refuse to accept payment, however small, upon account. Had we applied the latter rule, we should not have been defrauded out of $600 of hard-earned *per diem* and transcript fees in one case. In all cases where the *per diem* and transcript charges are the subject of agreement, the stenographer, when employed to take the "official" minutes, should respectfully request the attorneys to make a stipulation covering the details of the contract, which should be entered in the minutes. This

will prevent quibbling respecting the terms of the agreement.

The young practitioner will need surmount many discouraging obstacles, and, if he be conscientious, suffer not a few qualms of conscience, before he becomes competent to make perfect transcripts. He should not, for this reason, grow faint-hearted. Let him remember that, while proficiency in any art, and competency in any vocation, or profession, are of slow growth, yet, they are the flower of talent, the cultivation and development of which are proportionate to the industry and assiduous attention devoted to it Let him attune his life to the sentiment, and voice the words of the poet:

" As the bird trims her to the gale,
" I trim myself to the storm of time,
" I man the rudder, reef the sail,
" Obey the voice at eve obeyed at prime,
" ' Lowly faithful, banish fear,
" ' Right onward drive unharmed ;
" ' The port, well worth the cruise, is near,
" ' And every wave is charmed.' "

CHAPTER IX.

STENOGRAPHER-LAW.

THE STATUTES now in force in, and the decisions of the courts of, the State of New York, of importance to the law stenographer, are as follows:

STATUTES.

Stenographers for the Court of Appeals.

1. Stenographers to report proceedings before any judge of Court of Appeals, etc. The stenographers appointed or employed in the Supreme Court shall perform all such services as may be required from them, or either of them, in reporting, writing out, and copying all judicial proceedings which may be pending, or in progress, before any judge of the Court of Appeals, or justice of the Supreme Court, in which such services shall be required. And for the performance thereof, such reporter shall be entitled to receive the same compensation as is now provided for similar services in court, and which shall be certified and paid in the same manner. L. 1881, c. 369, § 1.

2. Other competent person may be appointed to perform duties of stenographer, when. When the official stenographer, whose duty according to the preceding section it would be to perform such service or services, is otherwise officially employed,

any other competent person may be designated and selected to perform the same in his place, and shall receive compensation therefor as provided in the preceding section. Id. § 2, as am'd L. 1884, c. 333.

STENOGRAPHERS FOR THE SUPREME COURT.

1. *Circuit and Oyer and Terminer.*

1. **Qualifications of stenographers.** Each stenographer, specified in this act — (the Code of Civil Procedure) — is an officer of the court or courts, for or by which he is appointed; and, before entering upon the discharge of his duties, must subscribe the constitutional oath of office and file the same in the office of the clerk of the court, or in the supreme court, in the office of the clerk of the county where the term sits, or the judge resides, by which or by whom he is appointed. A person shall not be appointed to the office of stenographer, unless he is skilled in the stenographic art. Code Civ. Pro. § 82.

2. **Stenographers of first judicial district.** The justices of the supreme court for the first judicial district, or a majority of them, must appoint, and may at pleasure remove, a stenographer for each term of the circuit court, for the general term of the supreme court, and for each special term of the supreme court which constitutes a separate part. Each stenographer so appointed is entitled to a salary fixed and to be paid as prescribed by law; he must attend all the sittings of the part for which he is appointed. If the judge requires a copy of any proceedings written out at length from stenographic notes, he may make an order directing one-half of the stenographer's fees therefor to be paid by each

of the parties to the action or special proceeding, at the rate of ten cents per each folio so written out, and may enforce payment thereof. Any such copy shall be accessible to and may be examined by any of the counsel in the cause. If there are two or more parties on the same side, the order may direct either of them to pay the sum payable by their side for the stenographer's fees, or it may apportion the payment thereof among them as the judge deems just. Code Civ. Pro. § 251, as am'd L. 1883, c. 4.

3. **Stenographers for extra terms in New York city.** The judge who holds, in the first judicial district, an extraordinary term of the circuit court, or an extraordinary special term of the supreme court, must appoint a stenographer for that term, who is entitled to a compensation, at the rate and in the manner prescribed by law for the official stenographer. Code Civ. Pro. § 252.

4. **Stenographers for oyer and terminer in New York city.** The judge presiding at a term of the court of oyer and terminer, held in and for the city and county of New York, must designate a stenographer of the supreme court, to act as stenographer for that term during its sitting, who is not entitled to any compensation in addition to his salary; except that, if a copy of any proceedings, written out at length from the stenographic notes, is required for the use of the presiding judge or the district attorney, the stenographer's fees therefor are payable, on his certificate, as a county charge. Code Civ. Pro. § 253

5. **Stenographers in Kings county.** The justices

of the supreme court residing in the county of Kings, or a majority of them, must appoint and may at pleasure remove three stenographers who shall severally attend, as directed by the respective judges appointing them, the general and special terms of the supreme court, and the terms of the circuit court and court of oyer and terminer in the county of Kings, and shall each receive an annual salary of twenty-five hundred dollars, and the expense thereof shall be raised with the annual tax levy as a county charge. Code Civ. Pro. § 254, as am'd L. 1884, c. 536.

6. **Assistant.** The stenographer, appointed as prescribed in the last section, may, with the consent of the judge holding or presiding at a special term of the supreme court, or term of the circuit court, or court of oyer and terminer, employ an assistant-stenographer, to aid him in the discharge of his duties at that term, whose compensation must be paid by the stenographer, and shall not become a county charge. Code Civ. Pro. § 255.

7. **Stenographers in other counties of second judicial district.** Each justice of the supreme court for the second judicial district, who does not reside in the county of Kings, must appoint, and may at pleasure remove, a stenographer, who must attend, as directed by the justice appointing him, the general and special terms of the supreme court, and the terms of the circuit court and court of oyer and terminer held in the counties of Suffolk, Queens, Richmond, Westchester, Rockland, Putnam, Dutchess or Orange, and when not thus officially engaged,

the stated terms of the county court, in each of those counties. Code Civ. Pro. § 256, as am'd L. 1877, c. 416.

8. Their salaries, how paid. Each stenographer, appointed as prescribed in the last section, is entitled to a salary fixed by law. To make up and pay the salaries, the board of supervisors of each of the said counties must annually levy, and cause to be collected, as a county charge, a proportionate part of the sum necessary to pay the same, to be fixed by the Comptroller of the State, in accordance with the amount of the taxable real and personal property in each county, as shown by the last annual assessment-roll therein. The treasurer of each county must pay over the sum so raised, to the Comptroller of the State, who must thereupon pay the salary of each stenographer, in equal quarterly payments, under the direction of the justice making the appointment. Code Civ. Pro. § 257.

9. Salaries in third judicial district. Each of the stenographers of the supreme court in the third judicial district, whose appointment is provided for in section two hundred and fifty-eight of the Code of Civil Procedure, (see subdivision 13, "Stenographers for Remaining Districts"), shall receive a salary of two thousand dollars a year, the salaries to be paid as prescribed in section two hundred and fifty-nine (see subdivision 14, "Salaries, how paid") of the Code of Civil Procedure. L. 1882, c. 173, § 1.

10. Same, in fifth district. Each of the stenographers of the supreme court of the fifth judicial district whose appointment is provided for in section

two hundred and fifty-eight of the Code of Civil Procedure — (see subdivision 13) — shall receive a salary of two thousand dollars per annum, to be paid as prescribed in section two hundred and fifty-nine — (see subdivision 14) — of said Code. L. 1884, c. 332, § 1.

11. Same in sixth district. Each of the stenographers of the supreme court of the sixth judicial district whose appointment is provided for in section two hundred and fifty-eight of the Code of Civil Procedure — (see subdivision 13) — shall receive a salary of two thousand dollars per annum, to be paid as prescribed in section two hundred and fifty-nine — (see subdivision 14) — of the Code of Civil Procedure. L. 1882, c. 325, § 1.

12. Same in eighth district. Each of the stenographers of the supreme court of the eighth judicial district whose appointment is provided for in section two hundred and fifty-eight of the Code of Civil Procedure — (see subdivision 13) — shall receive a salary of two thousand dollars a year; the salaries to be paid as prescribed in section two hundred and fifty-nine of the Code of Civil Procedure — (see subdivision 14) — and such stenographers shall report and transcribe opinions for the justices of the supreme court, when required, without additional compensation, and shall within twenty days after notice by a party that he intends to appeal, make a case and exceptions or bill of exceptions in a criminal or civil action or that briefs are to be made or arguments prepared in an action tried before the court without a jury, file with the clerk of the county in which such trial took place a transcript of the minutes taken by him on

such trial. The stenographer shall be entitled to six cents for each one hundred words of such transcript, which transcript shall be certified to by the justice holding the court at which the trial took place. Such sum shall be paid with the stenographer's salary in the manner prescribed in section two hundred and fifty-nine — (see subdivision 14) — of the Code of Civil Procedure. L. 1883, c. 215, § 1, as am'd L. 1888, c. 554.

(NOTE.— The last four preceding subdivisions [9, 10. 11 and 12] relating to salaries in the third, fifth, sixth and eighth judicial districts, were repealed by implication by the amendments of sections 258 and 259 of the Code of Civ. Pro. by § 1 of chap. 426, L. 1890, printed as amended in the next following subdivision. The extent of the repeal appears to be as to the amount and mode of payment of salaries, which really repeals the whole of subdivisions 9, 10, and 11, and that part of 12 relating to the amount of salary. It does not appear to affect the remainder of subdivision 12, relating to the duties of stenographers in the eighth judicial district. It seems that section 258 of the Code of Civ. Pro. [subdivision 13 following], as now in force, is the only provision of law relating to the appointment of official stenographers of the supreme court and their salaries in each of the judicial districts of the State, except the first and second.)

13. Stenographers for the remaining districts. The justices of the supreme court, or a majority of them, for each judicial district, excepting the first and second, shall appoint and may at pleasure remove three stenographers of the supreme court of such district. Each of such stenographers shall attend such circuit courts, special terms of the supreme court, and court of oyer and terminer, in his judicial district as he shall be assigned to attend by the justices of the supreme court, or a majority of them, for such district. Each of such stenographers shall re-

ceive an annual salary of twenty-five hundred dollars, to be paid by the Comptroller of the State, in equal quarterly payments, upon the certificate of a justice of the supreme court of the judicial district for which he shall have been appointed. Code Civ. Pro. § 258, as am'd L. 1890, c. 426, § 1.

14. Their salaries, how paid. To provide the means to pay such salary the Comptroller of the State shall, on or before the first day of November in each year, fix and transmit to the clerk of the board of supervisors in each of the counties in said district a statement of the sum to be raised by such board of supervisors, in accordance with the amount of taxable real and personal property in each of said counties as shown by the last annual assessment-roll therein. The boards of supervisors in each of such counties shall annually levy and cause to be collected in such county and to be paid over to the county treasurer thereof, the sum so fixed by the Comptroller to be raised by such board of supervisors, and such county treasurer shall pay such sum to the Comptroller of the State for the payment of said salaries. Until the first day of January, 1891, the clerks of the counties composing the seventh judicial district in which a term of court specified in section one — (see subdivision 13) — of this act is held must furnish the stenographer attending the same with a certificate of the number of days the term has been in session. Upon the certificate so furnished, the supreme court or special term thereof, held within said judicial district, may, not oftener than once in six months, by order, apportion to each county in

said district such a portion of the stenographer's salary as the number of days during which one or more terms were in session in that county bears to the whole number of days during which the terms were in session in that district since the last apportionment was made. Upon the presentation of a certified copy of such an order each county treasurer must pay to the stenographer, from the court fund, or the fund from which jurors are paid, the sum so apportioned to his county. Code Civ. Pro. § 259, as am'd L. 1890, c. 426, § 2.

(NOTE.— Section 261 of the Code of Civ. Pro., providing for the appointment and payment of additional stenographers when two courts are held at the same time, was repealed by § 3 of c. 426 of L. 1890.)

15. Temporary stenographer. If an official stenographer shall not be in attendance at a term of the circuit court, special term of the supreme court, or court of oyer and terminer, where issues of fact are triable, the justice presiding at the term may in his discretion employ a stenographer who shall be paid such compensation as the justice shall by his certificate fix, not to exceed ten dollars for each day's attendance and ten cents for each mile for travel to and from his residence to the place where the term is held, together with a reasonable sum for his necessary expenses and stationery. The sum so fixed shall be a charge upon the county in which the term shall be held, and shall be paid by the county treasurer upon such certificate, from the court fund or the fund from which jurors are paid. If the official stenographer of the judicial district in which such term shall be held shall have been duly assigned to attend such

term, the justice shall cause an order of the court to be entered at such term, that the portion of the sum so paid by the county treasurer, which was allowed for the per diem compensation for the services of the stenographer employed at such term, shall be deducted from the salary of the official stenographer who shall have been so assigned to attend such term, and the clerk of said county shall transmit to the Comptroller a certified copy of such order, and the Comptroller shall deduct such amount from the salary of such official stenographer and pay the same to the treasurer of said county. Code Civ. Pro. § 262 as am'd L. 1890, c. 426, § 4.

16. **Their expenses, how paid.** Each of those stenographers —(meaning those specified in section 258 of the Code of Civ. Pro. see subdivision 13) — is also entitled to payment of his actual and necessary expenses, while attending court, including stationery, and ten cents for each mile for his actual travel, between the place of holding each term and his residence, going and returning, or from term to term as the case may be. The amount thereof must be certified by the judge holding or presiding at the term, and must be paid, upon his certificate, by the treasurer of the county where the term is held, from the court fund, or the fund from which jurors are paid. But mileage shall not be computed beyond the bounds of the judicial district, except where the usual line of travel, from one point to another within that district, passes partly through another judicial district. Code Civ. Pro. § 260.

17. **General duty of stenographer ; notes, when**

to be filed. Each stenographer, specified in this act, —(meaning the Code of Civ. Pro.)— must, under the direction of the judge, presiding at or holding the term or sitting which he attends, take full stenographic notes of the testimony, and of all other proceedings, in each cause tried or heard thereat, except when the judge dispenses with his services in a particular cause, or with respect to a portion of the proceedings therein. The court, or a judge thereof, may, in its or his discretion, upon or without an application for that purpose, make an order, directing the stenographer to file with the clerk, forthwith or within a specified time, the original stenographic notes, taken upon a trial or hearing; whereupon the stenographer must file the same accordingly. Code Civ. Pro. § 83.

18. Notes, how preserved; when written out. The original stenographic notes, taken by a stenographer, are part of the proceedings in the cause; and, unless they are filed, pursuant to an order, made as prescribed in the last section, they must be carefully preserved by the stenographer, for two years after the trial or hearing; at the expiration of which time he may destroy the same. If the stenographer dies, or his office becomes otherwise vacant, before the expiration of that time, they must be delivered to his successor in office, to be held by him with like effect, as if they had been taken by him. They must be written out at length by the stenographer, if a judge of the court so directs, or if the stenographer is required to so do, by a person entitled by law to a copy of the same, so written out. Unless

such direction is given, or such a requisition is made, the stenographer is not bound so to write them out. Code Civ. Pro. § 84.

19. Stenographers to furnish gratuitously copies of proceedings to judges Each stenographer, specified in this act, must, upon request, furnish, with all reasonable diligence and without charge, to the judge holding a term or sitting, which he has attended, a copy, written out at length from his stenographic notes, of the testimony and proceedings, or a part thereof, upon a trial or hearing, at that term or sitting. But this section does not affect a provision of law, authorizing the judge to direct a party or the parties to an action or a special proceeding, or the county treasurer, to pay the stenographer's fees for such a copy. Code Civ. Pro. § 85.

20. To furnish like copies to parties, district attorney and attorney-general; compensation. Each stenographer, specified in this act must likewise, upon request, furnish, with all reasonable diligence, to the defendant in a criminal cause, or a party, or his attorney in a civil cause, in which he has attended the trial or hearing, a copy, written out at length from his stenographic notes, of the testimony and proceedings, or a part thereof, upon the trial or hearing, upon payment, by the person requiring the same, of the fees allowed by law. If the district attorney or the attorney general requires such a copy, in a criminal cause, the stenographer is entitled to his fees therefor; but he must furnish it, upon receiving a certificate of the sum to which he is so entitled; which shall be a county charge, and

must be paid by the county treasurer, upon a certificate, like other county charges. Code Civ. Pro. § 86.

21. These sections applicable to assistant-stenographers. The provisions of the last five sections are also applicable to each assistant-stenographer, now in office or appointed or employed, pursuant to any provision of this act — (meaning Code of Civ. Pro.) — except that the stenographic notes, taken by an assistant-stenographer, must, if he dies or his office becomes otherwise vacant, be delivered to the stenographer, to be held by him with like effect, as if they had been taken by him. Code Civ. Pro. § 87.

II. *Special Terms.*

1. Appointment and removal. Each of the justices of the supreme court assigned to hold special terms in the fourth judicial district, for the hearing of contested motions and the trial of issues of fact and law, may appoint and at pleasure remove a stenographer, who must attend and perform all such services as may be required of him in reporting, writing out, copying and otherwise assisting in all judicial proceedings before the justices appointing him, and also in transmitting papers to the county clerks' offices in said district for filing and entry therein. L. 1886, c. 401, § 1.

2. Salary and expenses, how paid; county charge. Each stenographer so appointed shall receive a salary fixed by said justice, not exceeding seven hundred and fifty dollars per annum, and also a reasonable sum for actual necessary expenses while traveling to and from said terms and while attending court, including stationery, and the same shall be

payable by the Comptroller in equal quarterly payments, upon the certificate of said justice. To provide the means for paying said salaries and expenses, each of said justices shall, on the first day of October, eighteen hundred and eighty-six, and annually thereafter, fix and transmit to the Comptroller the amount thereof, and the Comptroller shall on the first day of November, eighteen hundred and eighty-six, and in each and every year thereafter, fix and transmit to the clerk of each board of supervisors, in said district, a statement of the sum to be raised by the board of supervisors of each of the counties within said district, in accordance with the amount of taxable real and personal property in each of said counties, as shown by the last assessment-roll therein. Said board of supervisors must annually levy and cause to be collected, as a county charge, and paid over to the several county treasurers the several sums fixed by the Comptroller, and such county treasurers shall pay over the sum so collected to the Comptroller of the State, for the payment of such salaries and expenses. Id. § 2.

STENOGRAPHERS FOR COUNTY COURTS.

1. **Stenographers.** The board of supervisors of any county, except Kings, Livingston, Monroe, Cortland, Oswego, Westchester and Onondaga, may, in their discretion, provide for the employment of a stenographer for the county court and court of sessions thereof, and when said board of supervisors shall so provide, the stenographer shall be appointed by the presiding judge of said courts, and said board of supervisors must fix his compensation, and provide for

the payment thereof, in the same manner as other county expenses are paid. Code Civ. Pro. § 358, as am'd L. 1883, c. 403.

2. **Same, in Kings county.** The county judge of the county of Kings, from time to time, must appoint, and may at pleasure remove, a stenographer, to be attached to the county court, and the court of sessions of the county of Kings; who is entitled to a salary, fixed and to be paid as prescribed by law. He must attend each trial of an issue of fact in the county court or court of sessions. The stenographer, appointed as prescribed in this section, may, with the consent of the county judge, appoint an assistant stenographer, to aid him in the discharge of his duties, whose compensation shall be paid by the stenographer, and is not a county charge. Code Civ. Pro. § 359, as am'd L. 1877, c. 416.

3. **Stenographers in certain counties.** The judge holding or presiding at a term of the county court or court of sessions in either of the counties of Livingston, Niagara, Monroe, Onondaga, Oswego or Cortland where issues of fact are triable, may employ a stenographer to take stenographic notes upon trials thereat, who is entitled to a compensation to be certified by the judge, not exceeding ten dollars for each day's attendance, at the request of the judge. The stenographer's compensation is a charge upon the county, and in the counties of Livingston and Onondaga must be audited, allowed and paid as other county charges; and in the counties of Monroe, Niagara, Oswego and Cortland must be paid by the county treasurer, on an order of the court,

granted on the affidavit of the stenographer and the certificate of the judge that the services were rendered. The judge of the county court and court of sessions of Erie county may appoint and may at pleasure remove a stenographer of said courts, who must attend each term of the said courts where issues of fact in civil or criminal cases are triable, and shall receive therefor a salary of fifteen hundred dollars per annum, together with his necessary expenses for stationery, to be paid by the treasurer of said county of Erie, in equal monthly installments, on the certificate of the judge of said courts that the services have been actually performed or the expenses necessarily incurred. Said stenographer shall also report and transcribe opinions for the judge of said courts, as well as special proceedings where a stenographer is required, without additional compensation. Code Civ. Pro. § 361, as am'd L. 1890, c. 312, § 1.

STENOGRAPHERS FOR GRAND JURIES.

1. **How appointed; proviso.** It shall be lawful for the county judge of any county of this State, upon the recommendation of the district attorney of such county, to appoint a stenographer to take the testimony given before grand juries in said county, excepting that in the counties of New York and Erie such appointments shall be made by the district attorney of said counties of New York and Erie, respectively, provided that in all counties not having a population of seventy-five thousand, as shown by the State or Federal census next preceding such appointment, the county judge shall only appoint such stenographer upon a favorable vote of the board of

supervisors of said county. L. 1885, c. 348, § 1, as am'd L. 1886, c. 131.

2. Qualifications of same. Every stenographer appointed under the provisions of this act shall be a citizen and resident of the county in which he is appointed. L. 1885, c. 348, § 2.

3. Revoking appointment. Any appointment made under the provisions of this act may be revoked by the authority making the same, which revocation must be in writing and be filed in the office of the clerk of the county in which such appointment was filed. Id. § 4.

4. Duties; original testimony. It shall be lawful for any stenographer, duly appointed and qualified as hereinbefore provided, to attend and be present at the session of every grand jury impaneled in the county in which he is appointed, and it shall be his duty to take in shorthand the testimony introduced before such grand juries, and to furnish to the district attorney of such county a full copy of all such testimony as such district attorney shall require, but he shall not permit any other person to take a copy of the same, nor of any portion thereof, nor to read the same, or any portion thereof, except upon the written order of the court duly made after hearing the said district attorney. All of the said original minutes shall be kept in the custody of said district attorney, and neither the same nor a copy of the same, or of any portion of the same shall be taken from the office of said district attorney, excepting as above provided. Id. § 5.

5. Stenographer violating act. Every stenog-

rapher appointed as aforesaid, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor. Id. § 6.

6. Compensation. Each stenographer appointed as aforesaid shall receive such compensation for services rendered while engaged in taking testimony before a grand jury as shall be determined by the board of supervisors of the county in which he is appointed, excepting that in the county of New York, such compensation shall be fixed by the board of estimate and apportionment of the city of New York, and such compensation shall not be less than five nor more than ten dollars per day; and in addition thereto he shall be entitled to and shall be allowed for a copy of testimony furnished to the district attorney the same rate per folio as is now allowed to stenographers of the county courts or court of common pleas in their respective counties. Such compensation shall be a county charge, and shall be paid by the treasurer of such county upon the affidavit of such stenographer and the certificate of the district attorney specifying the number of days of actual service and the number of folios of copy furnished. Id. § 7.

STENOGRAPHERS FOR SURROGATES' COURTS.

1. Stenographers for surrogates' courts; in New York and Kings. The surrogate of each of the counties of New York and Kings must appoint and may, for cause, remove, a stenographer for his court, who is entitled to a salary fixed by law, and to be paid as the salaries of clerks in the surrogate's office are paid. Code Civ. Pro. § 2512.

2. Same; in other counties. The surrogate of each county, except New York and Kings, may, in his discretion, appoint, and at pleasure remove a stenographer for his court, who shall be paid a reasonable compensation, certified by the surrogate, in every case in which he takes notes of testimony. Such compensation is part of the costs of the proceedings. Code Civ. Pro. § 2513.

3. Duty of stenographer. The stenographer of a surrogate's court must, under the direction of the surrogate, take full stenographic notes of all proceedings, in which oral proofs are given, except where the surrogate otherwise directs. The testimony must be legibly written out at length by him, from his notes; and the minutes thereof, as so written out, must, after being authenticated as prescribed in the next section, be filed in the surrogate's office. Code Civ. Pro. § 2541.

4. How minutes of testimony authenticated. The minutes of testimony, written out as prescribed in the last section, or taken by the surrogate, or under his direction, while the witness is testifying, must, before being filed, be authenticated by the signature of the stenographer, referee, the surrogate or the clerk of the surrogate's court, as the case may be, to the effect that they are correct. Code Civ. Pro. § 2542, as am'd L. 1881, c. 535.

5. Same; to be bound in volumes, etc. In the city and county of New York, in the county of Kings, and in any other county where the supervisors so direct, the minutes of testimony written out by the stenographer must be bound, at the ex-

pense of the county, in volumes of convenient size and shape, indorsed "Stenographic minutes," and numbered consecutively. Upon the record of a decree made in any contested matter, the surrogate must cause to be made a minute, referring to each volume of the stenographic minutes, and to the pages thereof, containing any testimony relating to the matter. Code Civ. Pro. § 2543.

6. Expense of transcript. * * * * the surrogate may order — (in a will case) — a copy of the stenographer's minutes to be furnished to the contestant's counsel, and charge the expense thereof to the estate if he shall be satisfied that the contest is made in good faith. Code Civ. Pro. subdivision 3 of § 2558, as am'd L. 1881, c. 535.

SUPERVISORS TO PROVIDE FOR COMPENSATION, ETC., OF STENOGRAPHERS.

Salary. The board of supervisors of each county must provide for the payment of the sums chargeable upon the treasury of the county, for the salary, fees, or expenses of a stenographer or assistant-stenographer; and all laws relating to raising money in a county, by the board of supervisors thereof, are applicable to those sums. Code Civ. Pro. § 88.

TRANSCRIPTS.

1. Notes of stenographer; order apportioning salary of same, etc. The notes of an official stenographer, or assistant-stenographer, taken at a trial, when written out at length may be treated, in the discretion of the judge, as minutes of the judge upon the trial for the purposes of the article. (The pur-

poses of the article relate to exceptions, case and motion for new trial.) When, by provision of law, a justice of the supreme court of this State, by his order, in writing, duly entered in a county clerk's office in the judicial district of said justice, apportions the stenographer's salary among the several counties of said judicial district, or requires the duplication of any stenographic notes, taken in said judicial district, no notice of the application for said order shall be adjudged necessary upon any board of supervisors in said judicial district, and the liability for compensation for such services shall be deemed fixed upon the performance of the work. Code Civ. Pro. § 1007, as am'd L. 1884, c. 277.

2. Stenographer to furnish testimony. A copy of the testimony taken on the trial — (of a convicted person sentenced to State Reformatory at Elmira) — and of the charge of the court, shall be furnished to the clerk for the purposes of this act — (this relates to the duty of the clerk to transmit the testimony) — by the stenographer acting upon the trial, or if no stenographer be present, by the district attorney of the county; but the court may direct the district attorney to make a summary of such testimony, which summary may, after approval and by direction of the court, be made a part of the record herein provided for; and if the court so directs, a copy of the testimony need not be made and may be omitted from such record. The stenographer or district attorney furnishing such copy or summary and the county clerk, shall be entitled to such compensation in each case in which they shall

perform the duties required by this act, as shall be certified to be just by the judge presiding at the trial, and shall be paid by the county in which the trial is had, as part of the court expenses. L. 1887, c. 711, § 7.

3. Judge must transmit transcribed testimony to governor. The judge, presiding at the term at which the conviction took place — (in cases punishable by death) — must immediately thereupon transmit to the governor a statement of the conviction and sentence, with the notes of testimony taken upon the trial by him or the notes, written out, taken by a stenographer or assistant-stenographer, attending the court or term pursuant to law. Code Crim. Pro. § 493.

4. Minutes of testimony. It shall be the duty of the district attorneys of the several counties, within thirty days after the close of any term of the court at which criminals are tried, to file in the county clerk's office full and correct minutes, or a copy thereof, of the evidence taken on the trial of such criminals as have been convicted at said term. L. 1860, c. 135, § 1.

5. Transmission of same to governor. It shall be the duty of the county clerks of the several counties in this State to transmit to the governor, on his application, such minutes of testimony as filed in their offices respectively. Id. § 2.

6. Paper. * * * * The transcribed minutes of a stenographer taken in any civil or criminal action, or in any hearing or special proceeding, civil or criminal, shall be written or typewritten on paper of

the size hereinafter specified * * * * on paper of a uniform size, as follows: The paper must be ten and one-half inches by eight inches, and bound on the edge of the greatest length. Code Civ. Pro. § 796, as am'd L. 1888, c. 496.

7. Fees. Except where otherwise agreed, or when special provision is otherwise made by statute, a stenographer is entitled, for a copy fully written out from his stenographic notes of the testimony, or any other proceeding taken in an action, or a special proceeding in a court of record, or before a judge thereof, and furnished, upon request, to a party or his attorney, to the following fees for each folio: In a circuit court or court of oyer and terminer, or at a special term of the supreme court in the third, fourth, fifth, sixth, seventh or eighth judicial district, or in the supreme court of Buffalo, six cents; in any other court or courts, ten cents; and for the copy of the testimony required to be made in any proceeding for the records of the surrogate's court of either of the counties of New York or Kings, ten cents; and the surrogate may order that the fees for such record copy be paid out of the estate to which the proceeding relates. Code Civ. Pro. § 3311, as am'd L. 1891, c. 356.

Beside the foregoing statutes, there are others relating to the stenographer, his duties and rights; but these being of local interest, it is thought unnecessary to incorporate them.

DECISIONS.

A stenographer is not legally known in judicial proceedings, except as an officer of the court, acting

under its direction, and subject to its control. On a trial at circuit, the stenographer is such an officer, and acts in his official capacity; but on a trial before a referee, the employment is by the party or parties for his or their accommodation simply, and, therefore, it seems, his fees are not taxable on a trial before a referee, unless it is so stipulated. (Varnum v. Wheeler, 9 Civ. Pro. R. (Browne) 421.)

A client is responsible for stenographer's fees where the stenographer is employed by his attorneys to take the minutes of proceedings * * * and it is immaterial whether the parties, sought to be charged, instituted the proceedings or not. (Harry v. Hilton, 11 Abb. N. C. 448.)

In the absence of special agreement imposing a personal liability, an attorney for one of the parties to an action cannot be held personally responsible for the services of a stenographer therein. (Bonynge v. Field, 81 N. Y. 159.)

As a general rule, an attorney will incur no liability by simply requesting a stenographer to take and report the evidence and proceedings upon the trial of an indictment against his client, unless he expressly binds himself for their payment. (Bonynge v. Waterbury, 12 Hun, 534.)

In the absence of special agreement, all the parties to the action are jointly liable to an unofficial stenographer employed to take the official records of the proceedings before a referee, and furnish the parties with copies of the testimony. (Adams v. N. Y., Lake Erie and W. R. R. Co., 20 Abb. N. C. 180.)

An attorney has implied authority to bind his

client by employing a stenographer to report a special issue, and the right of such stenographer to recover for his services will not be affected if the client has expressly prohibited such employment, unless the stenographer knew of such prohibition. (Thornton v. Tuttle, 20 Abb. N. C. 308.)

A receiver of property in litigation is personally liable for the fees of a stenographer employed by his attorney to take the testimony, upon a reference to state his accounts as receiver. (Ryan v. Rand, 20 Abb. N. C. 313.)

An attorney, who has employed and paid a stenographer, whose minutes have been used by the referee, upon the trial and in making his report, has no right to the exclusive possession of such minutes, and an order is proper that requires such attorney to deposit them for the purpose of enabling defendant's attorney to make a case, and to enable the referee to settle the same, if one was made. (Woodworth v. Seymour, 16 Weekly Dig. 43.)

A stenographer is not obliged to deliver the minutes of the evidence taken before a referee, until he has been paid therefor. If he make such delivery for the purpose of enabling the referee to examine and use the minutes as the basis of his report, it is the duty of the referee to file the minutes with his report; although the stenographer's fees are unpaid. The stenographer cannot make a conditional delivery of his minutes. (Pope v. Perault, 22 Hun, 468.)

Official stenographers cannot require prepayment of transcript fees upon a computation or estimate of the probable number of folios. The legal rate per

folio only can be charged, and the number of folios must be ascertained by actual count. (Wright v. Nostrand, 58 How. Pr. 184.) In the last case the decision was at special term, and cannot be regarded as authoritative. The question therein arose upon a motion at the December (1879) special term of the New York (city) Superior Court before Justice Spier, made by the defendant's attorneys to compel Mr. Henry W. Parkhurst, the official stenographer of the equity branch of that court, to furnish a copy of his minutes of the trial of the action. The report of the case before us does not disclose that the justice wrote or handed down a written opinion The language of the case appears to be that of the reporter. It states that the court ordered the stenographer to write out his minutes (which he had refused doing without prepayment of transcript fees) and make out his bill at ten cents per folio by actual count. It then purports to quote the language of the justice: "that attorneys, as well as stenographers, are officers of the court and subject to its orders, and that in any case where it should be made to appear that an attorney had wrongfully refused to pay the legal charges of the stenographer, the court would protect the latter by a summary order against the attorney." In the case of Guth v. Dalton (58 How. Pr. 289) in which a motion was made at the February (1880) special term of the N. Y. (city) Common Pleas to compel an official stenographer to furnish a copy of minutes, Justice Daly decided that the stenographer may require prepayment of his fees, and remarked: "and I think it is not unreasonable to

require it." The report of the case states that the motion was granted "on tender of fees, at the rate of ten cents a folio."

The General Term (fifth department) of the supreme court in a recent decision (In re will of Byron, deceased, 40 N. Y. State Rep. 846, Oct. 23, 1891) in construing section 2558 (see *ante*, page 197, section 6 of Surrogate's courts,) Justice Lewis writing the opinion, decided that the order, required by that section to be made by the surrogate, must precede the furnishing of the minutes. In that case the order was made subsequent to the delivery of the minutes. The learned justice in the course of the opinion remarked: "Had the application been made before the minutes were furnished, it would have been made to appear to the surrogate that his official stenographer had already furnished a copy of most of the testimony to the proponents, for which he had charged them the sum of $332. An investigation would have undoubtedly shown that the stenographer, when he made the copy for the appellants, took a duplicate impression and had on hand an extra copy of the evidence. It would have afforded the appellants an opportunity to loan to the contestants their copy of the evidence and thereby save the expense of another copy. This case very aptly illustrates the propriety of the provision of the Code requiring that the application for the order should precede the furnishing of the minutes. The course pursued gave to the stenographer an opportunity to secure $456.80 for an exceedingly small outlay on his part. If properly regulated, the

services of a stenographer probably facilitate the business of our courts. They at least conduce to correctness, but unless a careful supervision is exercised over them by the courts their charges become exceedingly burdensome to the litigants. If this order is allowed to stand, there will be taken out of this estate for the work of a mere clerk in copying the minutes of the trial $788.80. The stenographer of the surrogate's court receives a salary for taking the original minutes. We are not advised as to the value of this estate, but assuming it to be an average estate the stenographer's charges would make a serious inroad into the accumulations of the testator."

See note on stenographers' fees, 20 Abb. N. C., 183n

CHAPTER X.

WORDS, DEFINITIONS AND FORMS.

THERE ARE words which occur very often in legal phraseology with which the stenographer should be acquainted. He should not only be armed with an appropriate and convenient phonographic outline to represent these, but he should learn their meaning. These words will be given below in alphabetical order.

FREQUENT WORDS.

A.

Abandon.ed.ing.ment
Abate.ment
Abet.ted.ing.tor
Abduct.ed.ing.ion
Abort.ion.ive
Abscond.ed.ing
Accept ed.ing.ance.ation
Accessor.y.ies
Accident.al
Accommodat.ed.ing.ion
Accompiice
Accord (and satisfaction)
Account.ing.able
Acknowledge.d. ment.ing
Accumulate.d.ing.ation
Accuse.d.ing.ation
Acquit.ed.ing.tal
Acre
Act.ed.ing
Action.able
Adapt.ed.ing.ation
Adjourn.ment.ing.ed
Adjudge.d.ing
Adjudicate.ed.ing.ion
Admeasure.d.ment
Administra.trix.or.tion
Admiss.ible.ion.ibility
Admit.ed.ing
Adopt.ed.ion.ing
Adulter.y.er.ous.ation
Adverse (possession)
Advance.d.ing.ment
Advertise.d.ment
Advice
Advise.d.or.ing
Affidavit
Affinity
Affirm.ed.itive.ing.ation
Afford
Affix.ed.ing
Agen.t.cy
Agree.d.ment.ing
Allege.d.ation.ing
Alien.ation
Alter.ate.ation.ing
Answer.ing.ed
Appeal.ing ed
Appear.ed.ing.an
Appel.late.ant
Appl.y.ied.ication
Appl.icable.icability
Appoint.ed.ing.ment
Apportion.ed.ing.ment
Apprais.al.ers.ing.
ment.ed
Apprehend.ed.ing.sion
Arraign.ed.ing.ment
Argue.d.ment.ing
Arrest.ed.ing
Arson
Article
Assault.ed.ing
Assess.ed.ing.ment.or
Assets
Assign.ee.or.d.ing.ment
Attach.ed.ment
Attempt.ed.ing
Attend.ed.ing.ance
Attorney
Authenticate.d.ing.ation
Auction.eer
Audit
Aver.ed.ment.ing.

B.

Bad (faith)
Baggage
Bail.ee.or.ed.ing
Ballot.ed.ing
Bank.er.ing
Bank.note
Bankrupt.ed.cy
Bar
Battery
Bequest
Bias
Bidder
Bigamy
Bill (of costs)
Bill (of exchange)
Bill (of particulars)
Bill (of sale)
Bill (of exceptions)
Body
Bond.holder
Book
Boundary.ies
Bought
Breach
Bribe.or.ing.ry
Burden (of proof)
Burglary.ies
Burn.t.ed.ing
Business
Buy.ing.er
By.law
By.stander

C.

Calendar
Cancel.ed.lation.ing
Capacity.ies.itated
Caption
Carrier
Case
Cause
Certain ty.ly
Certify ied icate.ication
Certiorari
Challeng.ed.ing
Chambers
Change d ing
Charge
Chattel
Check
Child ren
Chose (in action)
Circuit
Citation
Citizen ship
City
Civil
Claim
Clerk
Client
Code
Codicil
Collateral
Color
Commence.d.ing.ment
Commission.ed.or
Commit.tee.ed.ing.ment
Common
Communicate.d.ing. ation
Company
Compensate.d.ation
Competent.cy
Complain ed.ing.t
Compromis.ed.ing
Comptroller
Comput.e.ation.ing.ed
Conceal.ed.ing.ment
Conclude.d.ing
Conclusion
Concur.red.ing.rent
Condemn.ed.ing.ation
Condition.ed.al
Conscientious
Condone d.ing.ation
Conduct.ed.ing
Confess.ed ing ion
Confidential
Confine.d.ing.ment
Conform ed.ing
Consanguinity
Consent
Consider.ed.ing.ation
Consign ed.ing.ee or
Consolidate d.ing.ation
Conspir.ed.ing.acy
Constable
Constitute.d.ing.ation
Construct.ed.ing.ion
Contempt
Contest.ed.ing
Contingen.t.cy
Contiguous
Continue.d.ing ation. uous
Contract.ed.ing
Contribute.d.ory.ing ion
Converse.d.ation
Controversy
Convert.ed.ing.sion
Convey.ed.ing.ance
Convict.ed.ing ion
Convince.d.ing
Copartner.ship
Copy.ies.ied
Coroner
Corporate.d.ion
Correct ed.ing.tion
Correspond.ed.ing.ent. ence
Corroborate.d.ing.ation
Costs
Counsel
Court.house
Court.room
Court (of Record)
Court (not of Record)
Counterclaim.ed.ing
County
County (court)
County (judge)
County (clerk)
County (treasurer)
County (jail)
Covenant.ed.ing
Creditor
Crim.e.inal.inate
Cross.examine.d.ation
Cruel.ty
Curtesy
Custody.ian

D.

Damage.d.s.ing
Danger.ous
Date.d
Debt.or
Deceased
Decedent
Deceit
Deceive
Decide
Decision
Declaration
Decree
Deed
Default
Defects
Defend ant.ed.ing
Defense.ive
Deficient.cy
Define.d
Definite
Delay.ed
Deliver.y.ed
Demand.ed
Demur.rer
Deny.ies.ial
Department
Deposit
Depose
Deposition
Designat.e.ed.ion
Destroy.ed.uction
Detain
Detention
Determine.d.ation
Devise-d.ees
Defraud.ed.ing
Defective
Degree
Delusion
Deputy (sheriff)
Direct.ed.ing.ors
Disable.ity
Disagree.d.ing ment
Discover.ed ing
Disburse.d.ment
Discharge.d.ing
Discontinue.d.ing ation
Discover.ed.ing.ery
Discretion
Disease
Dismiss.ed.ing.al
Disorder.ly
Dispossess.ed.ing
Dispute.d.ing.ation
Disqualify.ed.ication
Dissolve.d.ing
Dissolution
Distinct
Distruct.ive.ion
Distribute.ive.ion
Disturb.ed.ing.ance
Dividend
Divide.d.ing
Division
Duty.ies
Dwelling.house

E.

Eject.ed.ment
Enlarge.d.ment
Entitle d.ing
Equity.able
Erase.d.ure
Error
Escape
Estate
Estop.ped.ing.el
Evidence
Examination
Except.ed.ing.ion
Exchange.ed.ing
Excise
Execution
Execute.or.trix.ion
Exhibit.ed.ing
Expect.ed.ing.ation
Expense.s d.ing
Experience
Expert
Express.ed.ing.ion
Extend.ed.ing.sion

F.

Fact.s
Fail.ed.ing.ure
False.ly
Fee
Felon.y.ious.ly
Fictitious
File.d.ing
Final
Find.ing.s
Fiduciary
Force
Foreclose.ed.ing.ure
Forgery.ed
Form.ed.er.ing.ation
Fraud.ulent.ly
Further
Future

G.

Gave
General.ly
Genuine.ness
Gift
Give.n.ing
Goods
Good (faith)
Grace (days of)
Grand (jury)
Grant.ee.or.ed
Ground.s
Guarant.y.ee-or
Guardian (ad litem)
Guilty

H.

Habeas (corpus)
Habitual (drunkard)
Handwriting
Hearing
Heir
Hereafter
Heretofore
Hereinbefor
Hereinafter
Hereunto
Herewith
Hereto
High.er.est
Highway
Homici.de.al
Horse.s
Horse (car)
Horse (barn)
Horse (stable)
Horse (blanket)
Horse (shed)
Hotel
Hotel (keeper)
Hour
House
Husband

I.

Illegitima te cy
Impeach
Imply.ied cation
Imprison ed ment
Improper
Immaterial
Impeach ed.ing.ment
Incompetent cy
Impossible ity
Incorporate.ation.ing
Indefinite.ness
Indict.ing ment
Indorse.r.d.ing.ment
Infant.cy
Inferior
Inform.ed.ing.ation.er
Inherit.ed.ing.ance
Innocen.t.ly.ce
Injunction
Injure.d.ies.y.ious
Inquest
Insan.e.ity
Insolven.t.cy
Institute.d.ing.ion
Instruct.ed.ing.ion
Instrument
Insufficien.t.cy
Insure.d.ance
Intend.ed.ing
Intent.ion
Interest.ed.ing
Interlocutory
Intermediate
Interrogatory.ies
Intervene.d.ing
Intesta.te.cy
Intoxicate.d.ing.ion
Inventory.ies.ing
Invoice.d
Irregular.ly ity
Irrelevan.t.cy
Issue.s.d

J.

Jail.ed.or
Jeopardy
Joint
Judge
Judgment
Judicial (notice)
Jurisdiction
Juror.s
Jury.ies
Jury (box)
Justice
Justif.y.iable.ied.ing.ication

K.

Knew
Kill.ed.ing
Know.ing.ledge.ingly

L.

Laches
Land
Landlord
Larceny
Law s.ful
Leading
Lease d.ing
Leave.ing
Legal.ly
Legacy
Legatee
Legislature
Lessee or
Letters
Levy
License.d
Lien
Life
Limit.ed.ing.ation
Liquidate.d.ing.ion
Lunacy.atic

M.

Machine_ry
Magistrate
Mail_ed_ing
Magnitude
Maintain_ed_ing
Maintenance
Malice
Malicious_ness
Malpractice
Man
Mandamus
Mandate
Mania_cal
Manifest_ed_ation
Manufacture_d_ing_ory
Manslaughter
Map
Market (value)
Mark_ed_ing
Marry_ied_iage_iagable
Measure_d_ing_ment
Mechanic_al
Medicine_al
Meet_ing_s
Member
Memoranda_dum
Men
Merchandise
Merger_ed
Merit_s_orious
Minor_s
Minutes
Misappropriate_d_ion_ing
Misconduct
Misdemeanor
Mistake_n
Mitigat_ed_ing_ion
Mone_y_ies
Mortgage_s_or_ee
Motion
Municipal
Murder_ous_ing_er
Mutila_te_tion
Mutual

N.

Name_ed_ing
National
Nature_al
Navigate_d_ing_ion
Necessar_y_ies_ily
Necess_itate_itated
Negative
Neglect_ed_ing
Negligen_t_tly_ce
Negoti_ate_ated_able_ ability_ation_ating
Newspaper
Next_(of_kin)
Night_time
Non_resident
Non_suit_ed
Notary_ies
Note_s
Notice_d_ing
Notify_ied_ication_ing
Numerous

O.

Oath_s
Object_ed_ing_ion
Oblige_d_ing_ation
Obscene_ity
Obstruct_ed_ing_ion
Obtain_ed_ing
Occup_y_ied_ing_ation
Offend_ed_ing
Offense
Offer_ed_ing
Office_er_ial
Off_set
Omit_ted_ing
Omission
Opinion
Order_ed_ing
Ordnance
Origin_ate
Overseer
Own_ed_er_ing
Ownership
Oyer_(and_Terminer)

P.

Paid
Paper_s
Part_ed_ing_ial
Particular_s_ity_ly
Partition_ed
Party_ies
Partner_s_ship
Passenger
Patent_ed_ing
Pay_ment_ing
Peace_ful
Penal_ty
Pend_ing_ency
Penitentiary
Peremptor_y_ily
Perform_ed_ing_ance
Perjury
Person_al_alty
Petit
Petition_er_ing_ed
Physi_cian_cal
Plaintiff
Plead_ings
Point_s

Policeman
Possess.ed.ing.ion
Post.office
Postpone.d.ing.al
Practic.e.d.ing.al
Power.s.ful
Prefer.red.ing.ment
Premium
Present.ed.ing.ment.ation
Presumptive.tion
Presence
Pretense
Principal.ly
Prisoner
Privilege.d
Probate.d.ing
Proceed.ed.ing.ings
Process
Product.ion
Professional
Promise.d.ing.sory
Proof
Property
Protest.ed.ing
Prove
Public.ly.ation
Publish.ed.ing
Punish.ed.ing.ment
Purchase.d.ing.or

Q.

Question
Quality
Quantity

R.

Railroad
Rape.d.ing
Real.(property.estate)
Reason.able.ably
Receiver.ship
Recognize.d.ing.tion
Recognizance
Recommend.ed.ing.ation
Reconsider.ed.ing.ation
Record.s.ed.ing.er
Recov.er.ed.ing.ery
Refer.ee.ence.red.ing
Release.d.ing
Relief
Remedy.ied
Rent.ed.ing
Replev.ied.in
Reply.ied
Report.ed
Represent.ed.ing.ation.ative
Request.ed.ing
Reside.d.ing.nt.nce
Retaxation
Return.ed.ing
Revoke.ed.ing
Revocation
Right.s.ful
Rule.s.ed.ing

S.

Sale
Saloon
Satisfy.ied.ing.action
Scienter
Seal
Secure.ed.ing.ity
Seduce.d.ing.tion
Service.able
Session
Set.off
Settle.d.ing.ment
Several.ty
Sheriff
Sign.ed.ing.ature
Slander.ed.ous
Special
Specific
State.ed.ing.ment
Statute.ory
Stay
Stealing
Stipulate.d.ing.ion
Stock.holder
Stolen
Subject matter
Submit.ted.ing.ssion
Submission
Subpœna.ed.ing
Subscribe.d.ing
Subscription
Substitute.ed.ing.ion
Suit
Summary
Summon.ed.ing.s
Superintend.ed.ing.ency
Superior.ity
Supervise.or
Supplement.al.ary
Supreme
Surety.ies
Surplus.age
Surrend.er.ed.ing
Surrogate
Sustain.ed.ing
Survive.al.or.orship
Swear.ing
Swore.n
Sentence.ed.ing

T.

Tax_ation
Technical_ity
Tenan_t_cy
Tender
Term
Territory_ial
Testament_ary
Testa_trix_or
Testimony
Threats
Title
Tort
Trade_mai
Transcript_ion
Transfer_red_ing_ee_or
Transport_ed_ing_ation
Trespass_ed_ing_er
Trial
Trust_ee_eeship

U.

Unauthorized
Uncertain_ty
Undersheriff
Undertaking
Unsound_ness
Usur_y_ious

V.

Vacat_e_ing
Vagrant_s
Valu_e_ed_ing_ation
Vary_ied_ing_ance_ation
Venire
Venue
Verdict
Verify_ication
Vest_ed
Violate_d_ing_ion
Void
Voluntary_ily
Voucher_s

W.

Waive_d_ing_er
Warrant_y_ee_or_ed_ing
Widow
Wife
Wilfull_y
Will_ed_ing
With_draw_al_ing
With_drew
With_hold_ing
Witness_es_ed_ing
Writ
Write
Writ_ing_ten
Wrong_ed_fully

An explanation of some words and phrases was given in Chapter VII. Beside these, there are others which the law stenographer will meet, and which he must recognize and understand. Following will be found those that will prove of most convenience.

DEFINITIONS.

A.

Ab initio (Lat.) — From the beginning.
Ad infinitum (Lat.) — To the utmost.
Ad libitum (Lat.) — At pleasure; at will.

Ad litem (Lat.) — To (or in) the suit or (controversy).

Administrator de son tort (Fr.) — Administrator in his own wrong.

A fortiori (Lat.) — By so much the stronger; by a more powerful reason.

Alibi (Lat.) — In another place.

Aliter (Lat.) — Otherwise.

Aliunde (Lat.) — From another place; or from some other person.

A mensa et thoro (Lat.) — Divorce from bed and board.

Amicus curiæ (Lat.) — A friend of the court.

Animus furandi (Lat.) — Intention to steal.

Animus revertendi (Lat.) — Intention to return.

A posteriori (Lat.) — "From the latter." Sometimes referring to mode of argument.

A priori (Lat.) — From the former.

Audi alteram partem (Lat.) — Hear the other side.

Autrefois acquit (Fr.) — Formerly acquitted.

Autre droit (Fr.) — Another's right.

A vinculo matrimonii (Lat.) — From the bonds of matrimony.

B.

Banco (Lat.) — In court.

Baron et feme (Lat.) — Husband and wife.

Bona (Lat.) — Goods; personal estate. (Rarely used in this sense.)

Bona fide (Lat.) — In good faith. (Frequently used.)

Bonus (Lat.) — (Literally, good.) A consideration given for that which is received.

C.

Capias (Lat.) — "You may take." Writ for a defendant's arrest.

Causa mortis (Lat.) — In prospect of death.

Caveat emptor (Lat.) — Let the purchaser beware.

Cestui que trust (Fr.) — Persons for whose use another has title to lands, etc.

Chose in action (Fr.) — A thing in action.

Clausum fregit (Lat.) — He broke the close, or field.

Color of title — The appearance of title; apparent title.

Compos mentis (Lat.) — Of sound mind.

Corpus delicti (Lat.) — The body of the crime — the very nature and essence thereof.

Cum onere (Lat.) — With the burden.

D.

Damnum absque injuria (Lat.) — Loss without an injury.

Datum (Lat.) — A point fixed upon.

De bene esse (Lat.) — Conditional.

De bonis asportatis (Lat.) — Of goods carried away.

De bonis non (Lat.) — Of goods not administered.

De donis (Lat.) — Concerning gifts or grants

De facto (Lat.) — In fact.

Dehors (Fr.) — Away from.

De jure (Lat.) — In or concerning the law, or right.

Del credere (Lat.) — Of trust.

De minimis non curat lex (Lat.) — The law does not regard trifles.

De novo (Lat.) — Anew: to begin again.

De presenti (Lat.) — Present time.

De son tort (Fr.) — His own wrong.

Dicta (Singular, dictum) (Lat.) — Sayings; statements; assertions.

Dies (Singular, die) (Lat.) — Days.

Donatio mortis causa (Lat.) — A gift in prospect of death.

Duces tecum (Lat.) — That you bring with you. (Name of a subpœna requiring a witness to produce books, papers, etc., upon trial.)

E.

Eo instanti (Lat.) — Immediately.

Estoppel (Lat.) — A stop. (One is *estopped* from doing an act, contrary to some act or declaration previously done or performed, upon the strength of which another has acted.)

Et alium (Lat. singular) — And another.

Et alios (Lat. plural) — And others. (Abbreviated to "et al." and used to indicate several parties, plaintiff or defendant, written after name of the first party.)

Ex contractu (Lat.) — By a contract.

Ex delicto (Lat.) — By a crime.

Executor de son tort (Fr.) — One who acts (as executor) illegally under a will.

Ex officio (Lat.) — By virtue of the office.

Ex parte (Lat.) — Without opposition.

Ex post facto (Lat.) — By a subsequent act.

F.

Falsus in uno, falsus in omnibus (Lat.) — False in one respect, false in all.

Feme covert (Fr.) — A married woman.
Feme sole (Fr.) — A single woman.
Feræ naturæ (Lat.) — Wild by nature.
Fieri facias (Lat.) — That you can cause to be done. (A writ of execution.)
Filius nullius (Lat.) — No person's son.
Flotsam (Lat.) — Goods floating on the sea.

G.

Gift inter vivos (Lat.) — Gifts between living persons.
Gist of action — From Fr. "gist." The *very* point in question.
Guardian ad litem (Lat.) — A guardian for the purposes of an action.

H.

Habeas Corpus (Lat.) — That you have the body. A writ used to produce a prisoner to inquire into the cause of his detention.

I.

Ignorantia juris non excusat (Lat.) — Ignorance of the law excuses no person.
In esse (Lat.) — In being; in existence.
In extenso (Lat.) — At large; to the extent.
In extremis (Lat.) — In the last moments; near death.
In flagranti delicto (Lat.) — In the commission of crime.
In forma pauperis (Lat.) — Suing as a pauper.
In futuro (Lat.) — In the future.
Innuendo (Lat.) — An oblique hint — an intimation.
In pari delicto (Lat.) — In a like crime.

In personam (Lat.) — Relating to the person.
In rem (Lat.) — Relating to the thing.
In statu quo (Lat.) — In the former state or condition.
Inter vivos (Lat.) — Among or between living persons.
In transitu (Lat.) — Usually applied to merchandise during transportation.
Ipso facto (Lat.) — By the fact, or deed, itself.
Ipso jure (Lat.) — By the law itself.

J.

Jetsam (Lat.) — Goods thrown into the sea.

L.

Laches (Lat.) — Neglect.
Lex (Lat.) — The law.
Lex domicilii (Lat.) — The law of the domicile.
Lex fori (Lat.) — The law of the court.
Lex loci (Lat.) — The law of the place.
Lex loci contracti (Lat.) — The law of the place where the contract was made.
Lex scripta (Lat.) — The written or statute law.
Lex non scripta (Lat.) — The unwritten, or common law: law received by tradition.
Locus delicti (Lat.) — Place where the crime was committed.
Locus in quo (Lat.) — The place in question. (Used frequently.)

M.

Mala fide (Lat.) — Bad faith.
Malfeasance (Lat.) — Wrong-doing.
Maximum (Lat.) — Greater.

Merger (Lat.) — Where a greater and less right meet in one person, the latter merges and sinks into the former.

Mesne (Lat.) — Middle, intervening. Mesne process — intervening process; mesne profits — middle profits.

Minimum (Lat.) — Lesser.

Moot (Lat.) — Doubtful.

Multum in parvo (Lat.) — Much in little.

N.

Ne exeat (Lat.) — That he depart not. The writ of ne exeat (now abolished in N. Y. State) prohibited a person leaving the State.

Nolle prosequi (Lat.) — Unwilling to proceed. In criminal proceedings refers to discontinuing or quashing an indictment.

Non compos mentis (Lat.) — Of unsound mind.

Non constat (Lat.) — It does not appear.

Non est (Lat.) — It is not.

Nonfeasance — Non-performance.

Nudum pactum (Lat.) — A bare, or naked contract.

Nulla bona (Lat.) — No goods. The return of a sheriff upon an unsatisfied execution.

Nunc pro tunc (Lat.) — Now for the time. Used frequently where an act is permitted to be done which should have been performed before, i. e : the making of an order *nunc pro tunc.*

O.

Obiter (Lat.) — Loosely; without authority.

Obiter dicta (Lat.) — See *Dicta.* Words spoken or written without authority.

Onus (Lat.) — Burden.
Onus probandi (Lat.) — Burden of proof.
Ouster (Lat.) — Dispossession.
Oral — Verbal.
Overt (Lat.) — Open; public.

P.

Parol (Lat.) — Verbally.
Pedis possessio (Lat.) — Possession by the feet; actual possession.
Pendente lite (Lat.) — During the continuance of the action.
Per autre vie (Fr.) — For the life of another.
Per capita (Lat.) — By the heads; share and share alike.
Per curiam (Lat.) — By the court.
Per diem (Lat.) — By the day.
Per verba de futuro (Lat.) — Words of future acceptation.
Per verba de presenti (Lat.) — Words of the present time.
Prima facie (Lat.) — The first blush, first view, or first appearance of a matter.
Pro rata (Lat.) — At the rate.

Q.

Quantum meruit (Lat.) — As much as deserved.
Quare clausum fregit (Lat.) — Why did he break the close. Name of a form of action for trespass.

R.

Rei judicatae (Lat.) — Of the matter adjudged. (Seldom used.)

Res adjudicata (Lat.) — Of the matter adjudged. (Used a great deal.)

Res gestae (Lat.) — The subject-matter. (Used a great deal.)

Res inter alios (Lat.) — Things between others.

Respondeat superior (Lat.) — Let the principal be answerable.

S.

Scienter (Lat.) — Knowingly; willfully. (Very often used in cases arising from injuries by vicious animals, in which "the scienter," i. e.: knowledge of such viciousness by the owner, is an important question.)

Scintilla of evidence — Not a spark of evidence.

Sine die (Lat.) — Without day. (Court adjourns *sine die;* that is, without fixing a time for convening again.)

Stare decisis (Lat.) — To rest on decided cases.

Status (Lat.) — The state or condition of a matter.

Sui generis (Lat.) — Of its own kind.

Sui juris (Lat.) — Of his own right.

T.

Tenendum (Lat.) — To hold. (Clause of a deed relating to the tenure of the land.)

Tort (Fr.) — A wrong; an injury.

Tort-feasor (Fr.) — A wrong-doer.

U.

Usufruct (Lat.) — The use and enjoyment of an estate or thing.

V.

Venire (Lat.) — To come. (In practice refers to a writ to summon jurors.)

Venue (Lat.) — The place of trial.

Versus (Lat.) — Against. (Used in this, or its abbreviated form "vs." in the title of a case between names of plaintiff and defendant.)

Vi et armis (Lat.) — By force and arms.

Vinculo matrimonii (Lat.) — In the bond of wedlock.

Voucher — In practice, a receipt.

FORMS.

SOME forms have been given in preceding chapters, to which reference may readily be made. Those which follow have been used many years and have proven satisfactory. In studying them, the synoptical transcript, with its divisional and subdivisional numerals, letters and figures, upon page 172 *et seq.* should be used, as the latter correspond to the numerals, letters and figures accompanying the following forms for transcripts and stenographic law reporting:

(I.) 1 SUPREME (or other) COURT. (II.) Fulton County.

2

(III.) 3 James Johnson
versus
John Jackson.

4

5 This cause came on for trial, at a term
6 of this court held in and for the County
7 of Fulton, at the court-house, in the
(IV.) 8 village of Johnstown, N.Y., on the 19th
9 day of October, 1891, before Justice
10 Putnam and a jury. (If a jury was
11 waived, substitute "without a jury.")

(V.)

Johnstown, N. Y.

(Trial commenced, October 25th, 1891, at 9:45 A. M.)

(Action upon a promissory note.)

(VI.)

Appearances:

Job Integrity for plaintiff.

(VII.)

John Deadhead for defendant.

John Dullhead, a juror, having been duly sworn as to his qualifications, upon being examined by Mr. Integrity, testified as follows:

(VIII.)

(Then follow with the testimony of the juror by question and answer.)

A jury having been duly empanelled (if a criminal case add "and sworn in the case") and the case opened to the jury on behalf of the plaintiff by Mr. Integrity, the following proceedings were had, and the following testimony introduced:

IX.

(a) *John Jenkins*, sworn for the plaintiff, on being examined by (b) Mr. Integrity, testified as follows:

(c)

Q. What is your business?

A. Farmer.

Q. Where do you live?

A. Johnstown.

Q. How long have you lived there?

A. Four years.

Q. Do you know the parties?

A. Yes sir.

(d) *Cross-Examination* by Mr. DEADHEAD.

(Proceed as before.)

(e) *Re-Direct-Examination* by Mr. INTEGRITY.

(Proceed as before.)

(f) *Re-Cross-Examination* by Mr. DEADHEAD.

(Proceed as before.)

(To show the objections the following is introduced.)

(g) Q. I believe the deceased told you that he had paid the claim in question?

(h) Obj. (or "objected") to as improper and incompetent under § 829 of the Code, in that it calls for a personal transaction or communication between the witness, who is an interested party, and a deceased person; also that it is improper and incompetent as calling for a conclusion; also that it is leading.

(i) Plaintiff (or defendant) offered to show by the witness that, at the time referred to by the witness, the deceased admitted that he had never paid the claim.

(h) Obj. to on the same grounds urged to the question.

(j) Obj. sustained, the Court remarking: "I am of opinion that this testimony is incompetent under sec-

tion 829 of the Code. This witness, it appears, is interested in the result of this case. He is asked to state a conversation had with a deceased person, under whom the plaintiff (or defendant) claims. I sustain the objection and exclude the evidence upon that ground."

(k) Plaintiff (or defendant) excepted.

(l) (Adjourned to Oct. 26th, 1891, at 9 A. M.)

October 26th, 1891, 9 A. M.

(m) Plaintiff rested.

(n) Defendant moved that the plaintiff be nonsuited (or that the court direct a verdict for the defendant) upon the following grounds, viz.:

1. That the plaintiff has failed to prove a cause of action against the defendant.

2. That the undisputed evidence shows, that the note in suit was paid and fully discharged before the commencement of this action. (And so on with the subdivisional numbers and grounds.)

Motion denied, plaintiff excepting.

(Then follows statement that Mr. Deadhead opened the case to the jury on behalf of the defendant.)

(o) (The forms for testimony and proceedings on the part of the defend-

ant are the same as on the part of the plaintiff.)

(p) Defendant rested.

(q) (The testimony contradicting or explaining defendant's testimony.)

(r) (The testimony contradicting or explaining last testimony of plaintiff.)

(s) Testimony closed.

(t) Defendant renewed his motion for a nonsuit (or requested the Court to direct a verdict) upon the same grounds stated in the motion made at the close of the plaintiff's affirmative case. Also upon the further ground that it now appears, by the undisputed testimony on the part of the defendant, that the note in suit was barred by the Statute of Limitations at the time of the commencement of this action, in that no payments of principal or interest had been made thereon within six years immediately preceding the commencement of this action.

(j) (Ruling, remarks of the Court, and (k) exception.)

(u) The Court gave the following charge to the jury:

Gentlemen of the Jury:—

This is an action brought by the plaintiff, James Johnson, against the defendant, John Jackson, upon a promissory note which has been produced upon this

trial and which I will read to you: $700, Johnstown, N. Y., December 1st, 1880. One year after date for value received, I promise to pay to the order of James Johnson, Seven Hundred Dollars, at the State Sandbank, with interest, John Jackson. Now, gentlemen, that, upon its face, is a valid note. In fact, the defendant does not claim that at its inception — that is, at the time it was executed and delivered to the plaintiff— it was not a good note. But, he comes into court and says that, while the note, at the time of delivery, was a perfect one, given for value received — a valid note — yet, on account of what has transpired since — or to be more exact, on account of the omission of the parties, the plaintiff to enforce payment, and the defendant to make payment, either of principal or interest upon the note for a period of six years previous to instituting this suit, the plaintiff cannot recover. In other words, gentlemen, in the language of the law, he claims that the note is barred by the Statute of Limitations. That claim is always the subject of defense. It is sufficient for the plaintiff to make out a *prima facie* case; that is to show the execution and delivery of the note. While it remains in the possession of the

payee, or in possession of a person to whom it has been legally transferred, there is a presumption of its validity, so far as the Statute of Limitations is concerned. Hence, if the defendant desires to benefit by that statute, he must allege the necessary facts in his answer, and prove them upon the trial, before the plaintiff can be called upon to answer, contradict or explain it. In other words, gentlemen, the defense which the defendant in this case has set up is an affirmative one, and the burden of proof is upon him to establish it. It is a defense that a party has a right to set up and prove; and it is your duty to give it the same consideration as any other legal defense.

Now, gentlemen, what is the evidence in this case? (It is customary for the Court to refer to the evidence sufficiently to show the application of the principles of law given to the jury, for their government in deciding the case), etc., etc.

(v) The plaintiff took the following exceptions to the charge and requested the Court to charge as follows:

I. Excepted to that part of the charge wherein the Court stated in substance and effect, that, if the jury believed the testimony of the witness, Immorality, it follows, as a necessary infer-

ence that the note is outlawed; and asked the Court to charge the jury in that respect, that they must take into consideration all the evidence in the case; that the burden of proof is upon the defendant and he must establish his defense by a preponderance of evidence. Also that the jury have a right, and it is their duty, to consider the immoral character of the witness Immorality, and that they have a right to entirely discredit his testimony, if they believe he has testified falsely.

The COURT: Gentlemen: that is so. I intended to charge that; but perhaps did not elaborate it as much as the request. You will consider all the testimony in the case; and if you believe that any witness has sworn falsely, you are not obliged to believe him, and you should not. The defendant must prove his defense by a preponderance of evidence.

Defendant excepted to the whole of the last charge.

II. Plaintiff excepted to that part of the charge wherein the Court stated, in substance and effect, that jurors should look carefully into cases because, as your Honor stated, you believe that perjury is on the increase; and requested the Court to charge that as much credit

should be given to the plaintiff 's as the defendant's witnesses.

The COURT: I refuse to charge otherwise than I have.

Plaintiff and Defendant both excepted to the refusal to charge as requested and to the charge as made.

(The same forms, etc., apply to exceptions and requests by defendant's counsel.)

(w) (1) The jury retired in charge of an officer, the following (2) papers being submitted to, and taken by, them to their room by consent of the respective parties: note in suit; chattel mortgage, plaintiff Exs. A. and C. etc., etc.

(3) The jury were brought into court whereupon the following proceedings occurred:

The COURT: Gentlemen: I received a communication from you in which you informed me that you did not understand my instructions to you in respect to the Statute of Limitations. All I can say to you regarding that is (continue with the further charge of the Court).

(If the plaintiff or defendant except to the additional charge of the Court, or make additional requests to charge, they should be taken.)

The jury again retired for further deliberation.

(4) The jury rendered a verdict for the plaintiff for $841. (If the jury is polled add "The jury were duly polled by the clerk."

(5) Motion for extra allowance of costs granted — 5% upon verdict.

(6) Defendant moved to set aside the verdict and for a new trial upon all the grounds specified in the Code of Civil Procedure (or whatever grounds are stated).

(7) The Court entertained the motion, and denied the same. Defendant excepted.

(8) Stay of 60 days after notice of entry of judgment.

The index may be in the following form after the title of the court, and names of parties as shown in above form. (See I, II and III.) The abbreviations "Dr.," "Cr.," "R. D.," "R. C.," in the following form indicate the respective examinations.

INDEX.

	Dr.	Cr.	R. D.	R. C.
John Doe	1	5	12	22
John Frost.....	27	31		
David Dorn	34			
Plaintiff Rested.		38		

(Continue with defendant's witnesses in same form.)

Defendant Rested, 121
Testimony Closed, 121
Charge of Court, 123

Reported by
JOHN FASTWRITER, Sten.,
Shorthandville, N. Y.

"One launched a ship, but she was wrecked at sea;
"He built a bridge, but floods have borne it down;
"He meant much good, none came: strange destiny,
"His corn lies sunk, his bridge bears none to town,
"Yet good he had not meant became his crown;
"For once at work, when even as nature, free
"From thought of good he was, or of renown
"God took the work for good and let good be."

— JEAN INGELOW.

INDEX

TO

THORNE'S PRACTICAL COURT REPORTING.

CATALOG OF
Phonographic Works

BY

BENN PITMAN AND JEROME B. HOWARD.

PUBLISHT BY
THE PHONOGRAPHIC INSTITUTE COMPANY,
CINCINNATI, O.

There is no question whatever of the truth of the statement that the Benn Pitman System is more generally used than any other in this country; at least this would appear to be true, from the reports made to this Bureau of various institutions teaching shorthand.—*Hon. W. T Harris, Commissioner of Education (Washington, D. C.), November 19, 1898.*

The following is a graphic summary of the Table of Statistics on the Teaching of Shorthand in the United States, in the Bureau of Education Circular of Information No. 1, 1893, pages, 40 to 141:

Benn Pitman, 747 teachers, 34.7 %.
Graham, 363 teachers, 16.8 %.
Munson, 228 teachers, 10.6 %.
Cross, 185 teachers, 8.6 %.
Isaac Pitman, 143 teachers, 6.7 %.
Lindsley, 81 teachers, 3.7 %.
Pernin, 64 teachers, 2.5 %.
Scott-Browne, 52 teachers, 2.4 %.
Longley, 52 teachers, 2.4 %.
McKee, 36 teachers, 1.6 %.
Pitman (unspecified), 35 teachers, 1.6 %.
Moran, 30 teachers, 1.3 %.
Sloan-Duployan, 24 teachers, 1.1 %.
Besides 38 others, each being less than 1 %.

To supply the increasing demand for stenographers, schools of shorthand and typewriting have been establisht in various parts of the country, and with few exceptions, all business colleges now have a "department of shorthand." A number of systems are taught, but that of Benn Pitman is more generally used than any other in this country and may be called the "American System."—*Report of the Commissioner of Education, for 1887–88, page 927.*

Instruction Books.

The Manual of Phonography. [430th Thousand.] By BENN PITMAN and JEROME B. HOWARD. Designed for instruction in Schools, Academies, Business Colleges, etc., as well as for self-instruction, in the art of Shorthand Writing. The proper book for the beginner. It contains a complete exposition of the system, from its simplest principles to the reporting style, arranged in alternate and opposite pages of explanation and phonographic exercises. Every principle is copiously illustrated with engraved examples for reading, and exercises in the ordinary type for writing and dictation practise. A mastery of this book fits the student to act efficiently as a business amanuensis and lays the indispensable foundation for reporting skill as developed in the *Reporter's Companion*. Revised, enlarged and improved. 200 pp., 12mo, cloth $1 00

The *Manual* is also issued in a special leaflet edition, for the use of teachers by correspondence. This leaflet edition is identical with the regular edition, except in the matter of physical make-up. Each page is printed on a separate leaflet, on one side of the paper only, and the pages are collated in a convenient box, from which the teacher can remove any desired page without disturbing the others. The price of the leaflet edition is the same as the regular edition In ordering, always mention expressly the "leaflet edition."

The Phonographic Reader. By BENN PITMAN and JEROME B. HOWARD. Designed to accompany the *Manual*. It affords the necessary reading practise in the corresponding style. The selections are taken (by permission) from "McGuffey's Revised Fifth Eclectic Reader," which may be used as a key. 52 pp., 12mo, paper, 25

The Phonographic Copy-Book. Made of double-ruled paper, such as is used by most reporters, but with the lines wider apart for the learner. This paper is especially useful to the beginner, and assists him to acquire a neat and uniform style of writing.

Paper, 5 cents; postpaid 7
Per dozen, 50 cents; postpaid 65

The three books last mentioned form a set, from which a perfect knowledge of this time- and labor-saving art may be acquired by any one without the aid of a teacher.

The set will be sent, postpaid, for 1 25

The Second Phonographic Reader. By BENN PITMAN and JEROME B. HOWARD. Contains reading exercises engraved in easy reporting style, and is keyed by "McGuffey's Revised Sixth Eclectic Reader." 52 pp., 12mo, paper 25

The Reporter's Companion. By BENN PITMAN and JEROME B. HOWARD. A Guide to *Verbatim* Reporting; for professional reporters and those who desire to become such. In this work, which should be studied only by those who have first mastered the *Manual*

of Phonography, the Principles of Abbreviation used in the Brief Reporting Style of Phonography are clearly explained and amply illustrated. Thousands of reporters have acquired their ability to write *verbatim* with no other instruction than that afforded by this and the preceding set of books. 187 pp., 12mo, cloth..... 1 00

The Phonographic Dictionary and Phrase Book. By BENN PITMAN and JEROME B. HOWARD. Contains a vocabulary of 120,000 words, including every useful word in the language and a large number of proper and geographic names, legal, scientific, and technical terms, engraved in phonography with a parallel key in ordinary type. Concerning each word information is given on the following points: 1. Spelling; 2. Accentuation; 3. Pronunciation; 4. Capitalization; 5. Fully-vocalized (or Corresponding Style) phonographic outline; 6. Reporting Style outline; 7. Compounding; 8. Principal phrases which it begins. The phonographic outlines are clearly and beautifully engraved, no roundabout, complicated "nomenclature" being employed. [Specimen pages will be sent on request.] 552 pp., 8vo, cloth..... 3 00

Business Letters. No. 1. — Miscellaneous Correspondence. Written in the Easy Reporting Style of Phonography, in accordance with the *Manual of Phonography*. By BENN PITMAN and JEROME B. HOWARD. The letters have been selected from actual correspondence in various branches of business, and, being free from difficult technicalities, are such as will furnish the best practise for young students of shorthand who are ready to begin fitting themselves for the duties of the shorthand correspondent or business amanuensis. With Key printed in fac simile typewriting, furnishing correct models for the transcription of the student's notes on the typewriter. 52 pp., 12mo, paper..... 25

Instructions in Practical Court Reporting. By H. W. THORNE. The standard work on this important subject. Exemplifies, explains and instructs as to all the details of trials, teaching the shorthand writer how to use his skill in making a report. Contains valuable suggestions to lawyers and law students found in no other work. Has received emphatic testimonials from official court reporters, judges, lawyers, law lecturers, teachers of shorthand and the press. 237 pp., 12mo, cloth..... 1 00

Books Printed in Phonography.

On Self-Culture, Intellectual, Physical, and Moral. A vade mecum for young men and students. By JOHN STUART BLACKIE, professor of Greek in the University of Edinburgh. Printed in the Easy Reporting Style of Phonography in accordance with the *Manual of Phonography* by Benn Pitman and Jerome B. Howard. 67 pp., 12mo, paper..... 35

Plain Talk. By C. H. SPURGEON. Written in Corresponding Style. 32 pp., 12mo, paper..... 25

The Legend of Sleepy Hollow. By WASHINGTON IRVING. In Easy Reporting Style. 31 pp., 12mo, paper..... 25

Sindbad the Sailor. From the "Arabian Nights' Entertainments." In the Easy Reporting Style. 45 pp., 12mo, paper..... 25

[See also *The Phonographic Library*, *page* 6.]

Typewriter Instruction Books.

The Touch Writer. A text-book for self- and class-instruction in the art of operating the typewriter without looking at the keyboard. By J. E. FULLER. Shift-Key Edition, designed for the Remington, Densmore, Fay-Sho, Underwood, and other writing-machines having a shift-key and the "universal" keyboard. 48 pp., oblong 4to, paper..... 50

Double-Keyboard Edition, designed for the Smith Premier, Jewett, Yost, New Century Caligraph, and other writing-machines having a double "universal" keyboard. 48 pp., oblong 4to, paper..... 50

Remington Typewriter Lessons, for the use of Teachers and Learners. Designed to develop accurate and rapid operators. By MRS. M. V. LONGLEY. 48 pp., 4to, paper..... 50

The Smith Premier Typewriter Instructor. By the Eight-Finger Method, in which the most rapid and least tiresome mode of writing every word correctly is clearly indicated, including suggestions and exercises for acquiring the art of writing by position, without looking at keyboard; containing also practical exercises in correspondence, business and legal papers, testimony, contracts, specifications, ornamentations, etc., etc. By ELIAS LONGLEY. 48 pp., 4to, paper, 50

The Yost Typewriter Instructor. By the Eight-Finger Method, etc. By ELIAS LONGLEY. 48 pp., 4to, paper..... 50

The National Typewriter Instructor. By the Eight-Finger Method, etc. By ELIAS LONGLEY. 48 pp., 4to, paper..... 50

Longley's Typewriter Instructor. In accordance with a scientific keyboard, etc. By ELIAS LONGLEY. 48 pp., 4to, paper..... 50

Miscellaneous.

How Long—A Symposium.—Consists of contributions on the length of time required for obtaining *verbatim* speed in shorthand writing, from the following eminent reporters: Jerome B. Allen, Eliza B. Burnz, Chas. E. Weller, Wm. A. Croffut, H. W. Thorne, Henry M. Parkhurst, Spencer C. Rodgers, Daniel C. McEwan, Thomas Allen Reed, Wm. Whitford, Edw. B. Dickinson, Philander Deming, Julius Woldemar Zeibig, Benn Pitman, Theo. F. Shuey, Thos. Towndrow, Theo. C. Rose, Sherburne Wesley Burnham, Wm. Henry Burr, Elias Longley, Dennis F. Murphy, Edw. F. Underhill, Adelbert P. Little, Chas. C. Marble, John B. Carey, Frederic Irland, David Wolfe Browne. A remarkable assemblage of opinions and experiences. Full of happy suggestions to teachers and self-instructed learners of shorthand. Illustrated with a finely-engraved portrait of each contributor. 189 pages. Paper, 50 cents; Cloth..... 75

The Teaching of Shorthand. By G. A. Clark. This essay was awarded a prize of Two Hundred and Fifty Dollars offered by the editor of the *Phonographic Magazine*, in which it was originally printed. It should be read by every progressive teacher of shorthand, regardless of systems. Paper..... 25

The Mastery of Shorthand. By David Wolfe Brown, Official Reporter, National House of Representatives. An essay on mastery by a master. One of the most important contributions to the literature of shorthand pedagogy. It deserves an attentive reading by every thoughtful teacher of phonography. Paper..... 35

Phonography—What it Is and What it Does. By Benn Pitman. Gives a concise account of the nature and capabilities of phonography (including a compend of the art, with engraved examples accompanied by key-words); also a brief historical account of the origin and development of phonography in England and America. Paper..... 3
Special imprint editions for teachers at greatly-reduced rates.

Baby Talk. A text-book for Babies on the Art of Learning to Speak. By P. W. A happy thought, happily formulated by a phonographer, for assisting parents to lead very young children, unconsciously to them, into a knowledge and correct use of the phonetic elements of English. Paper..... 25

The Dictater. A Collection of Graded Dictation Exercises for the use of Teachers and Students of Shorthand. By Mina Ward. Consists of exercises suitable for class-room dictation, counted and arranged to facilitate reading at any desired speed. The exercises are also arranged in order according to the average number of syllables in the words which each contains. Cloth..... 1 00

The Stenographer's Dictation and Form-Book. A guide to practical work for students in shorthand and typewriting, containing court records, business letters, and law forms. By CLAYTON C. HERR, (Official Reporter of the McLean County, Ill., Circuit Court since 1876,) and ANNA M. CAMPBELL, assistant. Cloth, 262 pp..... 1 50

The Game of Shorthand. An amusing and instructive game of cards for shorthand writers as well as for those unacquainted with the art. While playing this game all the leading principles of Phonography can be learned. Can be played by any number of persons, and delights young and old alike. In box, together with rules for playing..... 75

Divided Proverbs. A new, amusing and instructive game for everybody; but especially intended for teachers and students of the English, German, French and Spanish languages. The game is composed of well-selected proverbs from the languages above mentioned. Each proverb is divided into two parts, and each part is on a separate card. Rules for playing a fascinating game accompany each set of cards, 50

Periodical Publications.

The Phonographic Magazine. Edited by JEROME B. HOWARD. Publisht once a month. Each number contains beautifully-engraved Phonography, mostly in Brief Reporting Style, with Key; facsimile notes and portraits of celebrated reporters, besides original and contributed articles of general phonographic interest. The *Magazine* is now in its seventeenth volume, is a periodical complement to the text-books, and the authentic organ of the Benn Pitman system of Phonography. Subscriptions may begin with any number. Specimen copy free. Price, per annum (invariably in advance)..... 1 00

Vols. I to XVI (except Vol. VI, which is out of print), bound in cloth, each..... 2 00

The Phonographic Library. Each number contains a complete work of standard literature printed in Brief Reporting Style. All back numbers can be furnisht except those markt *.

Either series finely bound in cloth..... 1 75
Single numbers..... 10

First Series.

No. 1. Sir Roger de Coverley, by Joseph Addison; 2. Perseus, by Charles Kingsley; 3. The Greatest Thing in the World, by Henry Drummond; 4. *The Legend of Sleepy Hollow, by Washington Irving; 5. Rab and His Friends, and Our Dogs, by Dr. John Brown; 6. Dreams, by Olive Schreiner; 7. Rappaccini's Daughter, by Nathaniel Hawthorne; 8. The Masque of the Red Death, and Other Tales, by Edgar Allan Poe; 9. The Corvette "Claymore," by Victor Hugo; 10. Two Ghost Stories, and A Child's Dream of a Star, by Charles Dickens; 11. Tales from Shakespeare (The Tempest, The Winter's Tale), by Charles and Mary Lamb; 12. *The Man Without a Country, by Edward Everett Hale.

No. 13. The Tattler's Court, by Joseph Addison; 14. Jackanapes, by Juliana Horatia Ewing; 15. Theseus, by Charles Kingsley; 16. The King of the Golden River, by John Ruskin; 17. Pax Vobiscum, by Henry Drummond; 18. The Marquis Jeanne Hyacinthe de St. Palaye, by J. H. Shorthouse; 19. The Specter Bridegroom, and The Devil and Tom Walker, by Washington Irving; 20. The Study of the Law, by Timothy Walker; 21. Marjorie Fleming, by Dr. John Brown; 22. The Sons of Philemon, by Gertrude Hall; 23. Dream Life and Real Life, by Olive Schreiner; 24. The Lost Arts, and Other Addresses, by Wendell Phillips.

Phonographic Stationery.

Reporting Paper, per quire, 6 cents, postpaid..... 11
Per ream, $1.00; five reams, $4.50, sent by express at purchaser's charge. In ordering, specify whether single or double-line paper is wanted, and whether for pen or pencil.

Learner's Paper, wide double lines, like the ruling of the Phonographic Copy-Book. Can be used with either pen or pencil, per quire, 6 cents, postpaid..... 11
In quantity, same prices as Reporting Paper.

Reporting Case. A leather cover adapted to holding one or two quires of reporting paper, which can be removed when used and the case replenisht. Indispensable when the reporter, having no table, is obliged to rest his paper on his knees.
Sheep..... 1 00
Morocco..... 1 50

The "Phonographic Institute" Note Book. 200 pages, 4½ x 8½ inches, pen or pencil paper, single or double line, as ordered. Boards,
Each, 15 cents, postpaid..... 25
Per dozen..... 1 50
When more than three note books are ordered, they will be sent by express, at purchaser's charge, unless otherwise directed.

The "New Legal" Note Book. 100 pages, 5½ x 8½ double column, pen or pencil paper, single or double ruled. Tag-board covers, bound with tape so as to open flat. Each, 10 cents, postpaid.... 18
Per dozen..... 1 00
When more than six legal note books are ordered, they will be sent by express, at purchaser's charge, unless otherwise directed.

The "Phonographic Institute" Steel Pen, expressly manufactured for us for phonographic writing and reporting. These pens have especially fine, smooth points, and pleasant, uniform action. The peculiar shape is such that a great deal of ink is held by the pen with-

out danger of dropping, thus reducing to a minimum the frequency of dipping the pen.

No. 1, fine points.
No. 2, medium points.
No. 3, coarse points.
Per dozen, 10 cents; per gross..... 1 00

The "Phonographic Institute" Lead Pencil (actual diameter shown in cut), made expressly for us, with the finest grade of black,

tough lead, and especially recommended for phonographer's use.
Per dozen, 50 cents; per gross..... 5 00

Phonographic Tracts. For distribution by teachers and others.

No. 1. What They Say about Phonography—Opinions of Fifty Eminent Men and Journals.
2. Some Reasons why You should Learn Phonography.
3. Can Phonography be Self-Taught?
4. The Long Gains of Shorthand.
5. Phonography in the Public Schools.
6. Shorthand for Clergymen.
7. Modifications of Phonography—Wise and Otherwise.
8. Points of Difference between the Benn Pitman and the Present English Style of Phonography.
9. What Official Reporters Say about the Benn Pitman System.
10. The Educational Value of Shorthand.
11. What Some Leading Schools and Colleges Say about the Benn Pitman System.

Each, per 100, 10 cents; per thousand, 75 cents; with imprint, 1 00

Copies of this Catalog, for distribution, free.

The works herein described are for sale by all booksellers, or will be forwarded by us, postpaid (except when postage charges are given), on receipt of the prices specified. Safe delivery by mail is guaranteed only when order is accompanied by eight cents additional for registration fee. No goods will be sent by express C. O. D. unless order is accompanied by at least one-fourth of the price, to insure payment of charges. Sample pages of any publication will be sent to teachers on request.

Teachers of Phonography and Booksellers supplied at a liberal discount. All orders must be accompanied by a remittance. Send post-office money order, express money order, New York or Cincinnati draft.

N. B.—Local checks will not be accepted.

Address, THE PHONOGRAPHIC INSTITUTE COMPANY,
CINCINNATI, O